

Faming Church's Notes



Vol 6

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Contracts.

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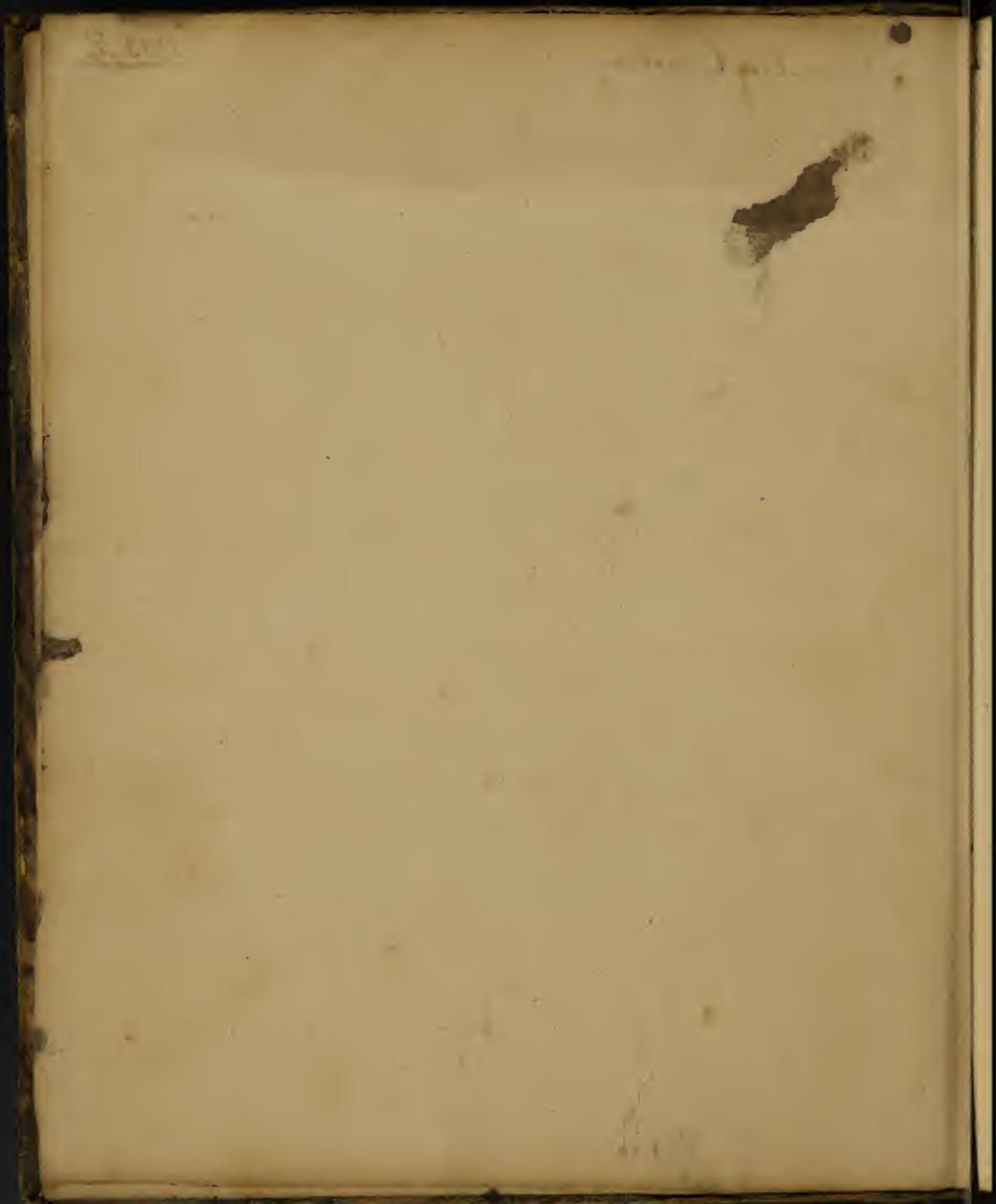
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12/13.E



Contracts

A contract according to St. I

"is an agreement upon sufficient consideration to do or not to do a particular thing" 201422

Raw. p. 6 defines it to be a transaction in which each party conveys an obligation to the other & each acquires a right to what is promised by the other - The term includes all agreements executed - E.g. leases - So as those which are executory - E.g. covenant promises - thus being in both a contract of the parties to the agreement respecting some right or property which is the subject of the stipulation -

Agreement of the parties is the essence of every contract - without it there can be no agreement & of course no obligation created or dissolved - 1 Raw. C. g. 2 Bl. 452

The requisites of a contract are - 1. Parties - 2. Mutual consent to some stipulation - 3. An obligation to be created or dissolved -
Raw. 7.

Hence a person non conformatus or an idiot he cannot regularly make a binding contract - he has no understanding & therefore in legal jargon - no will - In general contracts not of record made by such persons are mutually void says Powell & the letter opinion before us is that non est factum may be pleaded to them 1 Raw. 1112 - 4 Co. 123 - 2 Rot. 11 - 28

Raw. 152 4 Bl. 480 - 15. 4 Co. 123 -

Contracts

thus the remainder of a particular estate by a person now
unfor - does not destroy a contingent remainder depending
upon it - such as - 1 Raw. 12. 2d Oct 296-301. Sec 536
D. 2. 316. 2d Dec 284. 2d Oct 198 Comb 138. 88 Comt 111. 50. 135-
16th Com 113- See also whether mere contingent
pledge to such person deeds Ch 228. Sec 1635- 4 Co 123-
Stat 104- Bull 172- The opinions are contradictory -

But

persons insane are incompetent to receive property by a con-
tinuing title - ex - gift - &c as well as by descent - There being
it is said a presumed agent to whom in common property, there
is beneficial to the party with which the law is prima
facie satisfied - 1 Raw. 12. Co L. 26. 8 Dec 84- 2 Vent 203 -

While

is not it more proper to say that the law in such cases
dispensed with the agent required in other cases? & if the
insane deviates from his understanding & then
agrees to the purchase his agent then becomes binding - But
if he dies during his insanity or having recovered his
understanding dies without agreeing to it the heir
may avoid it - 1 Raw. 12. Co L. 2- 2 Vent 203.

But to

contract, namely, a person in considerate of a particular property
or to create any obligation upon himself, there is no such
presumed agent - 1 Raw. 14-

It appears to be a rule of the
C. L. that the person himself must be in recovering
his understanding cannot take advantage of his

Where jurisdiction are vested on one side & time given for the other to
accuse to them either party during the time given may dissent & put
an end to the matter - 15 C. L. & R. 101

If it employ A. to perform certain services &c. without the privity
& if it employ B. to perform those &c. cannot recover of A. & it is to be by
allowing r. & having to pay him 147 s. March 500 2 M. & 312. Morris
Bennet.

I do concur in holding a mist the summe of one to pay for damages
made will not bind the other the community of interest does not make
them parties 15 Nov 187 - Mr. Bell 300 & me 11 P. & 2 1/2
J. J. H. & I have to pay for the whole & I paid
147 s. March 500 2 M.

The contents of one non-compo. letter executed or
executing are placed on the same footing
as the contents of infants 11-Picks 306. 5 Ban & Crap.
172. 7 Dowla Ry 1614 Billed 310 - remaining 1 Mordya
etc etc 105-

Contracts

former incapacity?" for no person of full age shall disable himself or as is frequently said "stultify himself" - 1 Paro-14-26-
Bco L- 298. 622-298- 4 Coo 123 12th ed. pt. 3 Bar 83. 2 Pitt 405-
See also Bull-172- Stra 1184- 2 Vert-193-

This rule is founded upon supposed rules of policy to prevent fraud by
protected insanity - 1 Paro 20. 3 Bar 43. 4 Coo 104-

In the one

may cure his own insanity 2 Bar 90-

But after the death of
such non-cum- person his heirs &c may avoid his
contracts of this description. 3 Bar- 87. 4 Co-124- 2 Pitt 3- 203-
Bco L 298-

There are also two modes in which his contracts
may be avoided during his life - 1 In 2d of office
found upon the writ de Dicto inquisitio in the king
may by itself even during the life of the party create
allegations & other acts in favor of the non-cum- during
his incapacity - This office found her relation to the commis-
sion of the disability. 1 Paro-24- 2 Pitt 40- 4 Coo 128-
2 Co-170- 3 Bar- 28. 12th. 6 w 212

2. A suit may be brought in Equity
for the same purpose by the Atty-Gen. or committee of the party
but the non-cum- should not be capacity 1 Paro 26- 2 Pitt 414
12th. 6 w 112- 12g. 6 w- 279. 2 Vert-414- 3 Pitt 11. 2 Coo 123- 12 Pitt
577.

But if a suit in Equity is brought in behalf of a lunatic to compel
performance of a contract made with him while sane he

Contracts

ought to be party for the suit is not but to slay him or to
take advantage of his incapacity but to enforce his claim
the committee is but his bailliff - 1 Raw. 239. 1 Ch. Cu. 158.

^{If he}
lunatic makes a contract in a lucid interval he & his
representatives are bound by it 1 Raw. 29. 38a-39. D. 203
4 Co. 125. 28a 412-14.

Lunatics & idiots are bound by contracts
like other persons by contracts of record - Ex-pins do -
not avoid by their heirs or in any other way for no
avowment can be committed against a record - 1 Raw. 21 -
4 Co. 1221 - Co. L. 247. 10 Co. 42 - 22a-88 - 14. 203 - 3 Ray. 9.

^{If he is} bound

that one who having understanding is not an idiot in an
idiot is one who has no understanding from nativity - 131 394
Co. L. 24 - 3 B. C. 31 - 4 Co. 125.

Drunkenness the creating as a
temperance insensibility is not itself in Law or Equity a ground
on which one can avoid his contract - It is his own fault the
rule is founded in policy - But if one party or ours or others into
a state of deep intoxication & then obtains a contract from his
Equity will set it aside - for it is purely of fraud - 1 Raw. 20. 3838. 131
165. 19. 170. 6. 82 - 2 Lev. 202 - 1d. 1d. 172 con -

^{If he has}, is
a weak mind that is not, hence a sufficient reason for
avoiding his contracts - The law does not distinguish between
the different degrees of wisdom in man except when the beauty
is non-com - Scammon in Equity 1 Raw. 20. 3 P. W. 129. 130. 6. 8

A deed may be evidence for dues, if judgments
the under legal process bills, 506 & 446 508 if
made for unlawful services Bull 172 13 Maine R 146
Year of ^{judgment} Suff Badawic A. C. L. 148
13 Maine 146 17 do 338 5 Hill 158

A agreed with B. to furnish him 10 cows for a season
& C as master for B agreed to pay a certain sum per
head per month the year A & B agreed that A should
furnish & care only within their boundaries
11 C & 22d the contract being satisfied - cont dined ad

Contracts

1103.

Suits in Equity if any fraud or imposition is practised upon a person thus circumstanced - & if when such a person is a party there are circumstances warranting a suspicion of fraud Equity will relieve on the ground of fraud - *Pew 51 25 W. 129. 2 Pew. 228.*

Upon the same grounds general principle - want of capacity to consent to contracts made by infants except for necessities are regularly not binding, & the exception does not depend on necessity only - can neither own no other principles - *Pew 52. 59.*

In judgment of law have no distinction no physical power of agreeing to contracts -

The contracts of a female cannot be also regularly void for want of moral capacity to consent her will being subject to contemplation of law to that of her husband - Hence her contracts in general bind neither herself or husband - but there are other grounds on which her disability exists perhaps - her want of property of control over it - rights of the husband *Pew 59. 112.*

Who may bind others

If tenант in tail agrees to alienate his lands he is bound by his contract tho' to the dishesion of the free in tail & Equity will compel him to leave a joint & convey according to the contract for the inheritance is in his power & terminates in tail are not favored *Pew. 112. 186. 2a 171.*

The cestuy que trust of an estate made by an agreement to which the trustees

Contracts

are not parties and thus as well as his own interest & the trustees may be compelled in Equity to join in executing the agreement - for the lessor's interest is in the former - the trustee are mere depositaries of the legal title for his use 18ew-112 - 18th. Cen-173-208-

A trustee may also bind the estate of the testator trust - as by conveyance to one having no notice of that trust - for a purchaser bona fide is not to be affected by a right of the testator of which he has no notice 18ew-113 - 17th. 755 - 77 647. 663 - 8² 576 - 17th. 334. 447. 18ew. 113, 295

So an amanuensis used in his may by an agreement to claim his estate and his heir & the better after the former's death may be compelled to convey & the sum money will regularly go to the testator - for at the time of the contract the estate was absolutely the amanuensis' - the heir has then no right to it - The trustee's claim is therefore in Equity the prior & better title - 18ew-212
18th. 640-

In court of Equity, will when the amanuensis is only tenant for life demands specific performance of an agreement made by him against the heir where the agreement at the time of making it was clearly disadvantageous to the heir - 18ew-115 - 4 Br. P.C. 485 -

A mother acting as administrator to her husband may under special circumstances bind her minor children in Equity - 18ew-123 - 18th. 210 - 5² 62 - 2 Nov. 648. 18ew-173 - 19 Ultro 160. 243 -

The Chancellor in such case exercises a discretionary power

If an master or a stranger about a surgeon to
attend a patient has a bill to pay the expense
11 C. L 344

Ad B. agreed to exchange former & it agreed to
pay him so much per acre for the delivery of his
former produce the quantity was ascertained
in a given time. Note that the time limited
was not of the essence of the contract & that it would
not be exceeded, the the quantity was not ascertain'd
until after the time limited. 2 Regd 1733

A person who is indemnified has no right on that
account merely to demand an action & put the
guarantees to action aff'ome 22 C.C. 342 but where def^t
conveyed to Mr. & executed for good title & a suit was
afterwards agt off which he compromised it was held
that in an action on this &c^t he might recover the
whole sum paid & his costs as between lessor & agent
where he had given no notice of the suit to the def^t
for the effect of such want of notice in a suit on
a agent guarantee is to let in proof showing such
compromise unenforceable & where if notice had
been given & def^t had refused to defend it would
have been conclusive 23 C.L. 106 37 R. 374

1108 1901

Contracts

arising successively from the king the paramount guardian
of all infants.

So the contracts of a female before marriage bind
the husband whom she afterwards marries - for as he
takes her property & as the marriage suspends her
original responsibility, he ought to take her "cognovit"
Baw. 152 - Rot. 315 - 10 M. & 160 -

Between the real estate of a female
covert cannot be claimed except by fine or common recovery -
But the agreement of the husband to convey her real estate
if necessary by her upon private examination may be
enforced in Equity - an agreement by husband alone
cannot be - Baw 124 -

A tenant in tail agrees to convey &
in his spouse cannot be compelled to convey the he
might have done - They claim from the donor perform-
ans doni & the the tenant might have clutched the cestuit
yet, not having done it his sole agreement cannot deprive
them of their legal rights - Baw 125 - 1 L. & 288. Vol. 203 - 1 Ch-
Ca - 284 - Finch 128 - 1st Ch - 278. Gith. N. Ep. 264 - 2 V. & 634. Lewis
if the donee receive the consideration for which the cestuit
agreed to convey - The former by this act accepts & takes
the benefit of the agreement & is therefore bound in conscience
to execute it on his part, Baw 26 - 1 Ch. Ca 171 -

An agreement
by tenant in tail to dispose of the testing improvements of
the estate cannot be enforced against his spouse after his
death tho' it might against himself - Ex - An agreement

Contracts

to rent the tenement 1 Pow. 127. 68 & 60 50 - Poph. 194 -

The Executors,
Administrator, are implied in his duty to disengage himself
by his contracts of course without being named - 1 Pow. 128. 2 P. 81.

197.

An Attorney being duly authorized may by an agreement
bind his client & will not himself be bound 1 Pow. 128
3 P. W. 277. 2 Eq. 80. 57 B. R. 3. C. 54.

But if an Atty.-makes a contract
in behalf of his client which his not authorized to make the Atty.-
himself is bound but not the client. 1 Pow. 128. 28 & 12.

5

Q. Can

the contract be enforced against him, except in Equity; for
& the other party should sue the Atty.- upon it at law there
would be a concurrence - But might he not be subjected at law
as for a fraud or in tortious. The case might be on an
agreement implied?

If joint tenement agrees to alienate his
part & dies before the agreement is executed the survivor
cannot be compelled to perform it - his claim to the whole
is prior to that of the party claiming under an agreement
to a part - Sees if the agreement amounts to a concurrence
& the jointure is Engd - the jointure will be destroyed
1 Pow. 129. 2 Nev. 65. 634. 1 Inst. 59.

Q Does not the agreement always
amount to a concurrence in Engd - if it is neither being made by
a tenant in common or in Equity.

If a Debtor request the creditor to proceed agst the
Principal who at the time is able to pay & affirm, hence
insistent Debtor is liable. Such neglect being tantamount
to a contract not to sue Debtor & this matter may be
given in evidence under the 8th § 10 N.Y. 162

To make a valid contract it is not only necessary that the minds
of the parties to meet but the fact should be communicated
to each other. Ex. one party's letter to sell while the other's
letter accepts but before the last letter is rec'd dies. There
is no valid contract. So if the acceptance is undelivered the
offer is not found unless he conveys to the condition

2 Page 434

Cy pres and implied agent

Cy pres agent is

deliberately sovereign intended to signify it & may be
either present or concurrent or subsequent to the prin-
cipal act - Ex - 1. Master and servant to buy goods -
2. He buys himself & permission delivered to pay for them
- 3. Master buys servant buys without any previous au-
thority & master resists it - Pow. 181.

Servit & implied agent may arise in several ways - Ex - from
silence or inaction - or if a man mortgaged his house & con-
tracting with another to make a second mortgage
showing of the contract involuntarily silent - in this
case he loses his priority on the ground of implied agent
that this second mortgage should be postponed - tho he might
have had a right on the ground of facts - but it seems
not necessary to consider his silence as fraudulent - Pow. 182
28 Gen. 187. 1038. 893. 18 Gen. 379. Pow. 185 - 14 Gen. 6. 18 Gen. Ch. 95
1 Esp. & 58 unto

so it appearing present when
he made his second lease of the same land to a stranger &
knowing the contract makes no mention of his own lease -
The second lease being ignorant of the first will even at law
be preferred - Pow. 182 - Pow. 183. 18 Gen. 180. 1 Esp. 6a. 185
28 Gen. 377 - 2 Chancery will enforce such an implied agreement
agent even against his agent - unless he would practice
fraud - Pow. 184 - Barnes 182. 3 -

It has been held that if the
first mortgagor is a witness to the second mortgage and it is

Contracts

sufficient evidence of his knowing the contents until he proves
the contrary - Pow. 154. Bac. m. 186 - Denied by Dr. Headenhe
& Thurlow Rule would be dangerous - opportunity for
collusion against first mortg^{ee} L 1060

But to give the implied
agent in the person whom it is affected by it is necessary that
he know not only that his own claim interferes with the
subsequent interest but that his silence be voluntary
- if forced or caused into silence his interest is not affected
by it Pow 154 - § 2.

Upon the same general principle if the holder
of a note which has been dishonored omits to give reasonable
notice to the endorser he is considered as agreeing to discharge
the endorser & thereby only upon themaker - 1 Pow 153 - 172 -
176 - Doug 654 - Ch. B. 98. 122 - 202 - § 259

In general the law will recuse
a tacit agreement whenever it is necessary to give effect to some
principal contract founded upon an express agreement - Ex. If one
makes a sale of trees growing upon his land he tacitly agrees
that vendee shall have free ingress & egress to take
them - Pow 156 - 2 Bl. 35 - Finch. L. 63 - Col. L. 56 - § 1129

There is one
species of tacit agreement annexed to all contracts - if either
of the parties fail to perform his part he shall pay the
other all damages sustained by the non performance -
Pow. 157. Bac. 1011 . 3 Bla. 166 - § 48 - 74 -

When one usually
employs another to act for him on trust he tacitly agrees to any

The money being due on a Bond of oblige on
a diff consideration & futuremen present by
paid to pay her or wife on such occasion
as well as on the Bond 34. to £ 22 1 M^l and
£ 10 00

If A become bound with ~~as~~ or ~~sue~~ B in the same instrument & pay up the obligation he cannot sue B upon it for it is satisfied - His remedy is an action for money paid - But if he become bound in a separate instrument & pay that he is entitled to have B's Bond assigned to him & may sue it - So in the first case if B had separately given Security for the payment of his own act Bond & now payment of such joint bond would be entitled to such security & might enforce it agst B - i.e. the security -
8. Lnd. Ch. 6 344

Contracts

1109

Particular contract of the same kind that the Cestuaries
is his name - & in every case of payment release gift &c
there is a trust created on the part of the person - he stands under
the contrary appears - presumed to stand to whatever is profane
advantageous. 1 Pow 188. 9.

So an heir acquires property
which descended to him is presumed - So if done by
a will refusing to accept for the benefit according to the tenor
but fees for the honor of having the law implied and agreed -
must by the letter to repay the amount 1 Pow 189. Ch 105
122. 30. 63 - 209. Sum 1674

So if his creditor comes away his
wife that amounts to a trust upon his trust to be bound
by his contracts for necessities. 1 Pow 189.

Upon a sale of immovable
chattels there is an implied warranty by the vendor that
the article 1 Pow 189. 373. Esp 652 - 3 M 57.

What circumstances invalidate an assent given

Ignorance & error will in some cases invalidate an assent
given 1 Pow 189. 48

If a master or owner of one party acts to his own
right is measured by the reason of the other the contract is not
binding 1 Pow 140 but is invalidated on the ground of fraud
1848. 229. 4 616. 524 - 1 Nov 19. Esp - This induced to believe
that his creditors will be duly protected when it was not
relied his right for a small compensation - released it aside

What invalidates an agreement given

But if on a doubtful point of right both parties being ignorant on which side it lies a contract is made by which the real party entitled is loser the contract is good for the parties agree upon the ground of the right being doubtful in their minds & knowing that one of them must lose & each voluntarily submits to the risk of being a loser—
Ex. Case upon case of compromise between litigant parties
1 Powl-142-18, 84, 726. & letter-58

But if the party really entitled is ignorant of the extent of his right says Powell-144 the most means of the value of the subject contracted about & of the means of informing himself he seems not to be bound a. ~~the case may be~~ Ex - Case of a legacy to a daughter of £ 10-00 where his wife brought her part was £ 4000 she accepted the former & released the latter - Release set aside. 8 J.W. 316 & Powl-200-

In the case of Lawton vs Sanderson both parties being deceived by the opinion of another as to the right in question the contract was set aside in equity - ~~case of settlement~~
1 Powl-196. March, 364. just like the case of compromising a doubtful right there both parties agree upon the position of its being doubtful - here both ^{are} deceived tho' friends - But generally ignorance of law is clearly no ground for avoiding a contract - 1 Recam. a East 109 & quo to the case before

Wagering contracts are in general binding on the parties at law & it is not expected to the validity of such a contract that the event upon which the wager depends lies in the contingent —

Where are contracts for the purchase of land & the seller
desires executing the contract upon the ground that he
is unable to give a good title & the purchaser has
his bill to complaint or performance or rescission of the
contract if the seller is able at the time of the clause
to give a good title purchaser will be compelled to
receive it & if purchaser has paid any thing on the
contract seller must allow interest from the time
or clause was demanded & Article 244

Fraud vitiate all contracts. hence if a special contract be
void on the ground of fraud off. many disregard it &
bring aumpoint for the goods sold 6 Lls 111 1 Espe Day
430 2^d 522 1 Com. Court. 38 vice also 5 Lls 6 73 11 d^c
409 8 d^c 79 - 7 Decant 397

Fraud in the execution of a Bond or other Specialty
may be thrown in avoidance of it. Seem to stand
in the conveyances 4 Mend 473 4 Lls 443 1320
430 q Coover 309. 40 of failure of mind. 2 Lls 111
179 n 177 -

A. let to B. a part of his dwelling house. B. after entering
& occupying a part of the same abandoned because A.
introduced lewd women for the purpose of prostitution
into the other parts of the house. Held to be a suff-
ficient cause to an action for rent 8 hours 736 Dollars

Pandester 1 Esp 13. care in 8 hours 736 hours in 5 days
54 to be an extra charge & that there must be an entry &
exclusion by the landlord or some deliberate disturbance
of the possessor especially the tenant of the house if it is a right
of the possessor to operate as an establishment or performance
of the rent -

Tenant is bound to know that he actually uses what
he proposes to sell & the subject matter of the contract
to known to both parties to be liable to a contingency
which may destroy it immediately yet if the contingency
has already happened the contract is void 11 Pet 72
and 5 Barn 2802.

Land lying at Albany was purchased in
Albany for building lots tender represented
the surface to be now acquiring no grading that
he paid \$3000. for it all of which was false &
known to be by tender but not by vendor. Also
that in one action on the record for the sum of
money tender might show these facts by way
of no comparison of damages to him 43. 8 do.
233 23 Ward 2do full Day 250 255m
3 do 128 5 do 438 2 Hds 8 1/2 2 Lbs & P. 337
5 lbs 334 14 lbs 145 1 do 102 2 do R 1118 3
Ba C 633

What invalidates an agent given?

1163

Sufficient that it be equity, uncertain to both parties -
or that carelessness does not invalidate the agent -
18 Caw. 148 - East 37. 2 H. 610. 3 H. 693 -

As to cases in which the
agent of an intended purchaser of an estate is invalidated
by erroneous representations respecting the circumstances
or qualities of the subject (there being no fraud in the case)
this distinction is to be observed - If the mistake respects -

the circumstances or quality which appear to have induced the
principal to give him power he is not bound - Ex. an
agreement to buy land by a mill seat & there proves
to be no stream - 18 Caw. 149. 37 178. 2 H. 169. 4 H. 400. 2 H. 185 -

18 Caw. 32 - It can not be enforced in equity - qu. 2 Day

Second if the
mistake relates to a particular which appears not to have
been principally in the contemplation of the purchase - He
is then bound by his agent & his agent's lies in compensation
for difference in value & Equity will enforce the contract
18 Caw. 148. 9

But if an agreement for a purchase the purchaser
makes it an express condition that the subject shall possess
certain qualities or incidents - the absence of them will
invalidate him - agreement not enforced against him - 18 Caw. 150

In some cases the intention
of the parties as to their agent may be inferred from circumstances
& the want of agent may be inferred the same way - Ex. Sale of
female slave in the shape of a male & sold as a male -
unintended - 18 Caw. 150 -

According to Powell if an unruined house is sold for a price which he could not be worth unless round about of spent may be inferior to the contract is valid. Pow. 152. sec. 100. See Case 888 Decr. 23. 1713. 3-757. There is an implied warranty according to our decisions. 2 Root 407. 2 Dev. 120. 62. Contra Peabody 115 125. Pow. 142. 2 East 314.

Subjects of Contracts

Under this division

we are to enquire in relation to what subjects contracts may consist so as to bind the parties. Pow. 152. On this head a distinction is to be observed between contracts executed & executory 2 Bl. 443. & executed Executing What see 1 Pow. 234. 195.

As to the first or former.

simply contract executive unexecuting, in which he has neither an creditor or potential interest at the time of the emergence for one cannot transfer to another what is not his own Pow. 152. Shows 482 - Hob. 132 Ed. He grants to B all the wool he shall afterwards buy - grant is said to be £29.

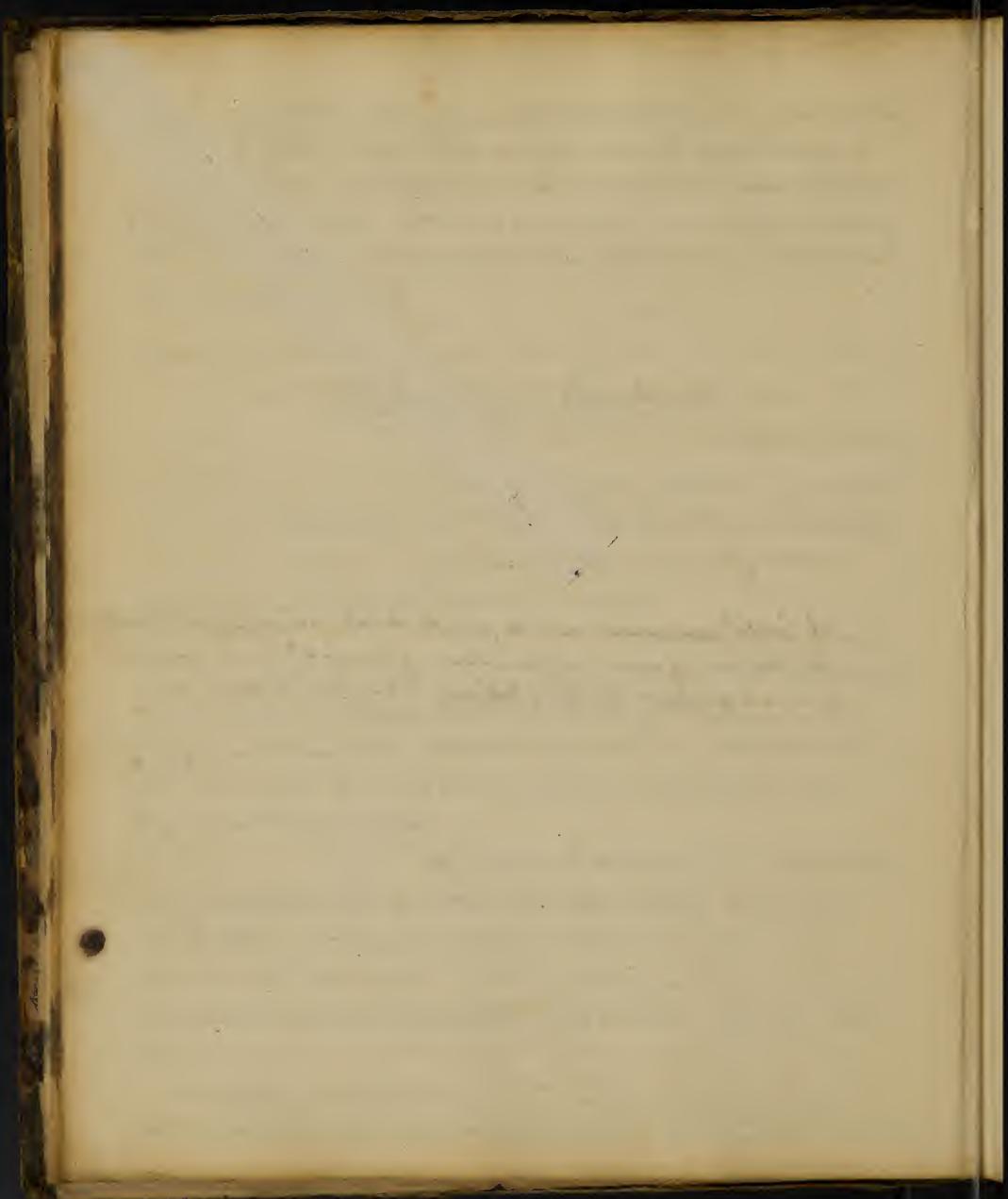
Let A lease to B the land of another lessor

may plead to debt for rent "The lessor has nothing in the land at the time of the lease" mit horribil' Le. 1 Pow. 153 C. 2. 41 Esp. 293. 306 3 L. 146 -

| Lessee of the lease were made by
indenture lessor is then estopped - Esp. 293. 306 - It is 87. 7 H. -
537.

If one of two joint tenants make a deed of long and sole of the
of the whole land & his co-tenant afterwards dies the before enrollment

A judge received on a judge's work ~~an assignment~~
for they are of equal nature. Some of the judges have been placed
in a set off & found for Off 5 Hill 409 1 low 208 5 Wond 240



Subject of Contracts

118

The moiety of the better does not pass Pow. 153 Barnes. 93. Sec. 2^d
the deed contains a covenant that greater is reserved of the whole
why would not the other moiety pass by way of stipulation?

Upon the same
general principle if A sells to B a horse upon condition of payment
of 6 months hence A cannot sell him to another before the expiration
of the 6 months for the property is changed & the sale to another
before that time would not be made good by failure of payment
at the time by B - for at the time of the sale the interest would
not lie in C Pow. 154 - Stand. 432 -

Nor can one grant that to
which he has only an inchoate title to be perfected in future
Ex - a contingent remainder - 1 Pow. 155 - 2d 221. 4 N. 248 - 1
the such contingent interests are deservable & inservable in
Equity assignable 1 Barb. 203 - 3 N. 88, 14 B. 329, 13 P. 222. 605 -

But nothing of which one is po-
tentially the buyer (that is - a thing consigned to another actually
under his name at the time of bargaining) may be disposed of except
by a contract executed &c. The right of one land for three
years to come. 1 Pow. 156 - 106. 152 -

Rights not vested certainly
or potentially may be subjects of executing antecedents - there
being no other terms stipulations incident & preparatory of
to the act by which the interest is to be conveyed - for the one
cannot certainly convey what he has not he may oblige
himself to convey what he shall acquire in future - &c. An
enclosure to purchase B are I convey it to B - An encumbrance
B to leave the land of which he shall be seized on such and day

Impossibility

in these cases a new fixture act is to be made to execute the
contract. (1 Pow. 188. 79. Sec. May. 79.) - Since if no fixture
act is to be made to give effect to the contract - it must then
take effect if at all in the contract specified which cannot be
the case, according to stand record to the use of 3 of the lands
he held afterwards purchased (1 Pow. 59. 234. Sec. May. 30 231. 445)
from his operator as a concession & entered - no fixture act
necessary -

It has been written in Eng. that there is one including
deed with covenants of seisin in Eng. lands of which he is not the
owner & afterwards purchases it he is entitled to allege that
he had no title - & the rule is the same in Eng. as to
leases (1 Pow. 122. 231. 295. Col. 265 - Sec. 226. Pow. 33. 495. 6
2 Rec. 564 - B.R. 29. 8 Mod. 253. B.R. 1048. 1830. 370. Cap. 233
306 - So also of mortgages) Pow. 33. 26 & 11. 1 N. 160

The

suit is the name at C. L. acts performed unenforced by deed with the usual
covenants (1 Pow. 160 - 142. 370. Col. 265 - Litt. 446 - 231. 295) Why
then may not a contingent remainder or executory clause
be parted by such a deed by way of stoppage?

All contracts must
be 1. capable of performance - 2. lawful - 3. certain. (1 Pow. 185 -

Impossible

No right can be acquired or obligation imposed or
made by contract to perform what is inherently im-
possible - such contract is null & void in the nature of things.
it cannot be performed (1 Pow. 160. 78) very non exist ad remane
1 Rot. 1420 - Col. 206 - Litt. Covenant to enclose one of lands

If logs be delivered at a mill under a contract
that the miller shall saw them within a certain time
for each receive one half the boards this is a mere bailment
of timber retaining the general property in the logs until they
are manufactured according to the contract - Bailee
acquires no interest in them until he entirely performs
on his part - when there is an entire performance both
become tenants in common of the boards - 3 Hill 29 3 T.R.
316. 8 Great. 101. - If the contract had been to take
the logs down & return a certain quantity of boards generally,
it would have been a sale.

Spode

1905

Scoured by the ocean. Burch 374. 90. 139. Beskev. 755-

Let the law

distinguish between acts or things in themselves impossible & those which tho' not so are insurmountable as to the party contracting - An agreement to perform the latter is binding. Ex: A contracts to sell an estate which belongs to B. If then C is liable in damages for non performance the Equity will not decree a specific performance - Pow. 161. 2 Day 1105.

In the former case it must be evident to all parties at the time that performance is impossible - & therefore cannot be the intention of either that it should be performed.

In an agreement to deliver two grains of corn on Monday 2d - I soon forgot in doubling the quantity in every successive Wednesday in the year - The principal it is held in is liable to pay damages - Pow. 162. 2 Day 1104. 8100 305. West 269. Rec. III. 1. Pitt 295. 1. Met. 587.

Upon what principle is this decision founded. for the general rule is that if the thing stipulated for is not delivered its value is the measure of damages - Burr. 1110. Star 480. 2 East 211. Domb 424. 1 Pow. 408. 2 N.Y. 81. 1 New 217. 1 Eq. Cas. 221. express contract treated as void on the ground of fraud - the promisor subjected on an implied contract to pay the value of what he has received for it.

A contract is not void upon the ground of its being impossible unless it is strictly so - the distinction between a near & remote impossibility is not regarded in equity

Sarful.

Contracts - Ex. A covenant by a master to discharge his bond &c. shall be settled on him is binding & may be specifically enforced in equity - Pow. 165 - for the contingency whether prosecutable or not is not impossible.

If one covenants to supply & absolutely to do a thing, not impossible in itself, his being prevented from performing it even by irresistible accident does not discharge him - Ex. A covenant to be at such a place by such a time with a ship to take a cargo - presented by trespass - covenanter holds liable Burns 1839. 1 Grah. 366 - Doug. 259.

In such a case there is actually an injury against the risk of failure - It would be otherwise if the covenants had been to perform the voyage with ~~intended~~ in a time in which such voyage could not have been performed.

Sarful. - The thing stipulated to be done must be morally possible. That is - lawful or the contract is void for no man can be bound in law to do what while the law itself forbids - Pow 164 2/3

A contract is illegal
law when the agreement is to do a thing which is malum in se or malum prohibitum. Pow 165 - 18 W. 189

Of the first kind are all contracts which have for their object something forbidden by the laws' notion - ex. to commit murder - A contract therefore to pay £ - a certain sum if he will kill or not. B & C. 1866 - Pow 166 - 18 W. 189 - Grah. 218 last p. 89

If we have his land & cannot or will not give
people their voices for he who lets goes, so give
people not money to give evidence of a law suit
18 Oct 1492

Agree to indemnify me for publishing so let us
to indemnify the cost of just in sum 39 £ 2 4s 8d

200

200

Lawful

So contracts are against law when they have for their object
something which tho' not against the law of nature or the
divine law is contrary to the law of the land or Municipality
See Co L 208 Powe 166

A contract may be contrary to the
law of the land by being so repugnant to the public
policy - 2. As being against some maxim or principle
of law - 3. As being opposed to some positive stat. 1 Pow 166
Co L 39. 144, 31, 322. 3 M 17. 23. 87, 543. 8-89. 160-272-2 W, 341

1. All contracts the object
of which is a general restriction upon one trading in a certain
~~place~~
are against law as being opposed to the general
policy of the state & therefore void - 1 Pow 166 - Plt. 63
Powe 166 - Vol 211 - Reg 92 - Co L 272 - Tid 303 - So are
all contracts in general which militate against natural
policy - 144, 31, 322 - 3 M 17, 543 - 8-89. Co L 39.

Rule the same as
to contracts the object of which is a general restriction
upon the exercise of a trade even for a limited period -
1 Pow 167. 8 M 543. 31 Co L 208 - 1 Plt. 181
So if a husbandman agrees not to cultivate his land
1 Pow 167. Co L 11 Co L 53. 6

But an agreement not to exercise a
trade in a particular place may be binding for such contracts
may be lawful - 1 Pow 167. Co L 595 - 2 Blst 132 - Palmer 172
Tomes 13 -

But a contract of the latter sort is not obligatory unless
founded upon sufficient consideration & upon this point

Lawful.

the onus probandi it seems lies upon the party claiming under the contract - the presumption is against the existence of a sufficient consideration & 18 Law 168 - Stra 39. 8th 759 - Mo 115 - 242 - Psalm 172 - 18th W 181.92 11. 1100 27. 85 - 180 - 2 It seems to be material in determining whether the trade which one agrees not to pursue is his by profession or not - if it is not still the validity of the contract depends upon the foregoing distinctions - for no man ought to preclude himself from engaging in any useful trade 18 Law 169 - 18 W. 192 & therefore the policy of the law is opposed to the contract -

When the same general principle is extended to unlawful maintenance void - it is against the public welfare 18 Law 172 - Easton 29 Easter 229. 2 Inst 212 431.85 -

A contract with an alien enemy is also generally void as being against the public welfare - because a communication between us & the public enemy may endanger the public welfare or safety Plowd 68 - 10 Ed 100 - 18 Law 173 - 21 Holl 173 172 - 85 -

So an insurance on the property of an alien & void it promotes the commerce of the enemy & gives our own citizens an interest in the security of that commerce 172 548.6 85 - 1801 - 245 - 18 East 96 - 455 - Doug 288 -

The rule that contracts with an alien enemy are void is not universal - lenient contracts with an enemy - that is a contract by which the captured party on condition of being discharged agrees to pay the captor a certain sum or a ransom, or obligatory & the master

it participata in con contempt ext cannot receive of
another participata money paid at his request in
furtherance of the common object 25 C. L. 47.

No ministerial office whose fees are prescribed by
law can require an extra sum or a minister to pay extra
for extra services tho they are beyond what would be
necessarily required of the office to render 15 Mord 44
Picks 175. 46t. 451 2 Burn 924 60 Kas 103

An agreement between a Physician & his patient
the one to give his services during the life of the
other & of the patient to pay him a certain
sum at his desire is valid as furnishing
an endowment to one to shorten the life
of the other - And where owing to the situation
of the parties great confidence is induced - as in
the case of Physician & patient -atty & client
or attorney & witness all contracts between them
are viewed with jealousy & will be set aside
if such confidence has been abused 10 C. E. 8
149 Bridgeman & Green 2 Rev 627 Waller Green & Sch.
2 Lef 492

of a ship may by such a contract bind its owner as well
as himself - but such contracts can be enforced only in
a court of Admiralty - Doug 619. Burn 1734 - 812568 -

In the same

that the hostage or the captor is taken with the hostage
whether being only a pledge the party independent of
the hostage Doug 619 - 812568 - Burn 1734 - See Parallels
and contracts in general made with a view to secure out
of state of hostility & tend to mitigate the evils of war
are binding Doug 265 - & Treaties of peace between
belligerent states having stipulations between mil-
itary commanders - agreements for exchange of prisoners
- in Eng - however various contracts are now prohibited
by 22 Geo 3 - Marchat. 2nd - 432 - 8 M. 272 -

bribery

No bribe, no borage

lends one void - that is lends quia propter, in or promoting
marriage because they are of dangerous consequences
injurious, against the welfare of society - & the same
principle applies to promises & agreements of the same
kind - 1 Par 174 - 91 - 1 Ch. 2 - 87 - Shaw - 76 - 1 Rob. 445 - Burn
474 - Ep. 184. 5 Law 411

2. Contracts opposed to any maxim or prin-
ciple of law are void - hence if the consideration which is the
cause of the promise or the promise itself is opposed to any
such maxim or principle the contract is unlawful. Said
thus a promise on consideration promisee would law-
fully discharge a debt due to his master or holder
vid 1 Par 176, 66 - 1 Rulst 38 - 8 Sat. 9. Consideration is illegal

Danful

If a Sheriff promises for valuable consideration to permit an escape it is void - the promise is unenforceable. 1 Pow 156 - 10 E 2d 102
C 3 - 356 - Cro E 199 - So a promise by a minister of Justice to do an unlawful act in his office or by another to indemnify him for doing it - 1 Pow 156 - Cro 8 230

But when the unlawfulness of the consideration or rather the fact which makes it unlawful is unknown to the promisee or contract of indemnity founded upon it is binding - & he brings his action on pretence of having lawfully caused him a promise to indemnify the host for keeping him as a prisoner - if the host is negligent or is liable on his promise 1 Pow 155, Nutt 53 So if the Sheriff in a fit of anger causes the Sheriff to take certain goods as the cost which are not his & promises indemnify him the promise is good 1 Pow 153 Cro L 753.

All contracts which militate against morality & decency are void as being illegal. Corp 39 - 729, 85 - 1 Pow 88 - 233 - 2 H - 610 - 3rd 693 - So contracts made for corrupt purposes &c - leet with one, having a note or interference in his appointment that I shall not be appointed to such an office 1 Pow 182 - So of a wager with a councilor or Judge by way of bribe 1 Pow 184 So of a magistrate or leet master of money - or of wagers as to the mode of playing an illegal game - 1 Pow 156 - 2 3631 45

But a wager between 2 H. & D. in a case left to the ultimate decision of 2 H. is good as to D. Corp 58. & wagers in general are binding as to D. 1 Pow 146

" But in other all wagers are made illegal 1 Pow 361 - see -

The projectors of a Rail way, having a Bill in Parliament
for incorporating them made an agreement on behalf of
the proposed corporation in consequence of which the threatened
opposition was withdrawn. Hale held the corporation
bound, ^{so} the benefit of the agreement was limited by it
so that it was not enforceable 10 C. E. Ch 85 and 4 do 28

¶ Bay St. of 1849. the interest only is forfeited & the contract
is void only in respect to that - Vid Stat. Ct. 1849.

a. 4 May 270. 7 Sols 16s 31s. But a bond from one in es^t to
be a true prisoner fust to escape is good if not for escape and
forwards 18 round 16s. 16s in 2 2 Sols & 23s - do a bond for escape
& consequences that prisoner may go at large within the
walls of the prison & conditioned that he shall remain a
true prisoner is not valid for such indulgence the Sheriff
may grant consistently with his duty 2 Sols & 23s - .
vid 18 round 18 but if any thing be added to the contract
permitted by the act which is not legal it avoids all
the rest 18 round 18 not good vid

8 Sols 48

Lawful

in what cases may be in gaming -

7121

Contract in favor of third person
and legal void - Ex - An agreement between two sisters & another
to cheat the government - 1 Pow - 165-76 - 2 N - 768 - 2d 106 - ~~¶ 181.~~ 822.
656 - 2d 184 - Doug 433.50 - 2d 156 - 13 of 2d V. 286 - void at law as
well as in Equity

Agreement to refund part of a marriage
portion - fraudulent as to the other party to the marriage Ex 184
Stem 240 - An agreement for money for attendance at meetings
to influence the mind of another by influencing judges - 1 Pow 186 -

¶ 5 Contracts prohibited by Statute
are void, Pow 186.56 - & A contract for nonresident legislation
is void by 12 Conn. 2 Ann. Stats 172-26 - ¶

Loan agreement by co
can be kept or any person in his behalf to accredit for
paying his anticipate is void by 5 G 2 - 2 would have been so
as to be fraudulent against the other creditor Pow 190 Doug 696.80

Contracts are unlawful & void
when the object of them is the omission of some legal duty - as, as
covenant by a master & servant not to serve as a slave - or intended
amount - Pow 175 - Nut 12 - Mor 756 -

1 Maine, Re 450 143 Stem 378 2. Lo of contracts which tend
to encourage unlawful acts or omissions - as a bond to indemnify
a printer for printing bills. Pow 196 - Lo of contracts to indemnify
a sheriff for embezzling a writ or suffering an escape - or to, cure
one himself if he will do any unlawful act. Pow 197 Pow 60 -
1 Law 209 - 10 Lo 100 - Dg 324 - 118 - Cro E. 6 353 Lo of a merger
attempt to blot one of them on a trial, then shall be an

Saraful

any criminal act - an instrument to immorality. Par 198

Distinction between bonds
for the performance of covenants some of which are lawful
and some unlawful - & where some are void & some lawful
at C.L. - & the last case the whole bond is void - in the
latter it is good as to the covenants which are lawful & void
as to those which are unlawful - Thus if an undivided
covenant not to sue for $\frac{1}{2}$ of a certain amount & also to
serve the sheriff's accounts & cestumipes of services omitted
by him the bond as to the former covenant is void & as to
the latter good - Par 199 - 2 Blis 357 - 1 Bent 258. But if a sheriff
takes a final bond against the $\frac{1}{2}$ of a c. - for care & keeping &
also for a debt the whole bond is void - Par 200 - 4 B&C 438 -
1 Bent 287 - 2 Blis 357.

This distinction arises from the different
construction of the Stat. Laws as it declares the bond is void - that is -
according to the construction in such cases the whole bond
or security - The only illegal covenant would yet
after it has been rejected the law is sometimes sufficient
to prevent refusing to aid either party in rescinding it -
1 Peller 200.

When the illegality is of such kind that both parties
are deemed innocent here is the verdict expected - that is -
the unlawful covenant is alone he who has paid cannot recover
back what he has paid - "In pari delicto se - 10 Par - 220

O Dang 457.8-68 - Bull 11.131 - Bent 22 - 3 N. 578 - 1 Bos 1 - 9 - 295 -

Kings 70 - Burr 1012 -

Thus while the contract remains

The delivery of property to one by a Sheriff where he holds
by virtue of a Levy is a sufficient cause for a Plaintiff to
recover it. *Courtesy 322*

Any agreement between creditor & his bankrupt debtor calculated
to deprive the other creditors of his - but where every thing is
fair & the creditor agrees to take no dividend unless
the Commissioner in Council of which the debtor promises
to pay the debt such promise is binding - *Long v. N. 214*

A person under a quarterly living & diek^d without
self cause in the middle of the quarter can be
recru for the whole quarter in fact. Amongst the
restrains. Ministrally after demanded the performance
whole service - yes 4 Comp 375 2 C. L. 354-140
14 C. L. 13. 34 do 155. if he dies before the quarter
is up he cannot recover for the whole quarter
24 C. L. 155.

A Sheriff is obliged to perform all official
acts required of him by parties in interest
& is entitled to receive a reasonable compensation
& in the absence of any Statute providing otherwise
the payment of the same he must have the
right to recover of his employer 3 Met 315

Suspul

25

in entering his name upon back the money paid 18 Nov 202 - 2nd 1822
Dong 471 - Ex Money paid to C to his heir to beat 3 & the latter is
not committed the money may be recovered back - Lewis is committed
- que - ate the unexecuted the distribution is wait principle
- would it not be better to allow a recovery in both case in
point of principle or in neither 87 N 585 - Lewis claimed that
money deposited on illegal wages & paid over with his
warrant after the wages is due cannot be recovered Lewis
87 N 575 - 1803-3-248 - Dong 676 - See 1 Nov 471 in principle
But if the money in this case had not been paid over either
party may recover from the statue holder the sum
respectively however the the wages is claimed - 8 East 222
87 N 405 - Cen 4 Johns - 426-

Suppose the party holds
say the winner after being published to be liable
120239. 87 N 409 1803-3-248. 1 ~~1846~~ 1743164. 87 N
1075 - 2 Wils 203-9. On principle he is for as it seems
to me the court not in such case recover it of the
statue holder & East 222 - To vid Cap - Q² D- 25- contra
ly Hoffmann record & the weight of authority seems
to be against the recovery on the ground that when the
contract is executed the party paying cannot recover
back - Under our Statute the loser pays upon back his
allowance Act - 361

It has been decided that money paid
to one of the parties before hand on an illegal wage
was recoverable back after the event 87 N 575 - 2 Wils
The court was in favor of the debt - 1 Nov 90 87 N 575

420m 420 Money paid for the procurement of an office
inconveniencible before the officer is promoted - seen afterwards
- So if a premium is paid on an illegal policy before
afterwards it is over. | Paw 202 - Doug 451 | not recoverable

But when the party
who has paid money on an illegal contract is not participant
in it he may return it back tho the contract is
executed Paw 201-21

This is the case where the law prohibits
the interest for the protection of the party paying - & in
case of any paid - Paw 202-4 - Comp - 791 - Doug 451
Ch. Stra - 915 - 4 M. 5-61 - Ruth 132 - 141. 81. 65 - 1 Forb -
218-35 Sec 122-cm - To pay money paid by a bank
rupt or his friend to an auditor for signing his certificate
1 Paw - 205 ante

In a security given or promise made
in consequence of which a transaction prohibited by law
is not done void - Ex - If one of two partners incur
illegal transaction paying the other 2 letters security
or promise from the other for a payment of part of it
it is good - 4 Barn 2069. 3 M. 118. 241. 31. 379 - Date 130 -
6 M. 61-405 - 2 Bon 372 - 7 M. 630 - So it has been
held if it is paid with the party's consent of the other
party the security is given or promise made 3 M. 630
for this rule however most states seem to be
entirely overruled - 246 M. 379 - 6 M. 61-405 - 7 - 6 20
2 Bon - 372 - 3 Ver 19 - Paid without his party's consent
there can hardly be no money 2 M. 1243 - Here there is no

Past decrictiv is a suff^l consid^r to support a cost^l for pecuniary separation
of the innocent offspring of such imminent insulpsne has a claim to protection
to support whil locut^l of Eq^l cannot b^l do not clearead^l 2 P^l 1122
3 Bro P^l 445 Soll^l 153 Anns 520 l solm^l lde 338.

Dft^t guaranteed off Aug^r 5th debts to be accounted by A.B to
the extent of £400. A.B contracted a debt to the amount of
£625 & on a composition with his creditors paid 8% in the
pound leaving due off on his side debt £356. Hele
that dft was entitled to have a deduction of £171.13.4
the amount of the dividend in £400. at 8% per ann^u and
20 L. £213. Nam. 111

Certain

newals of certain no special instance

of a person without the
maker or contract the meeting of which is made criminal
in him by positive law he may be bound by it tho' he could
not claim under it - &c - By 21 & 22 Eliz. 3 - it is an offence for a
clerk to receive but if he means to receive he would
be bound by his contract as a receiver 1 Citter. 199. Ch. 19 for
the nature of the contract is not unconfused his making it
only is so - The only is the offending party & the object of
the law is merely to subject him to a restraint - not to
grant him an immunity - he cannot take advantage of
his own wrong, 1 Citter. 199.

If the object of a contract is
perfectly unlawful it is void - no recoverable sum to be obtained
- of no advantage to the party claiming - & agreement
not to use one's hands -

A contract which wantonly affects
the peace or interest of third persons is void - & Weiger
that he - has committed a crime See Raw. 232 - Cauf. 729, 58
3 M. 699 - So of a waiver which tends to the introduction of
indecent evidence Raw. 293 - 3 M. 700

Certain

Raw. 130 - 82 - Pd. 270 - 1 Keb. 776 - Hob. 67 - Gleme

if a promise to action given in consideration
of the promise to pay money in a short time & promise
is ready to be sued 1 Raw. 182, 1 Bult. 297 - 1 Hob. 2. 250
because the promise which is the consideration of it
is uncertain & therefore void -

(128)

not a promise to pay money without specifying a time of payment is good - It is payable immediately 18ew 180. for it incites a present debt - 7th 124. 42) & no future time is appointed for payment - This is one pecuniary or a collective act & no time is appointed he has his whole life time it is said to perform it Ex - To deliver goods at 18ew - 180 - Said is certainest & not certain reddit because if I promise to repay to C whatever he may exact for me it is sufficiently certain - 18ew 180 8th - 148 Cro 8. 194 - Tid - 270. 1 Recd - 56. 65 -

Nature and kinds of contracts

All contracts are said to be executory or executory - A contract is said to be executory when the parties transact for the property to each other together with the possession or with a right of future possession depending upon an event that is certain without either trusting to the other - Ex Goods to be paid for & delivered - One having land under a lease sells it to another to vest when the lease determines 18ew - 2 34 - 175 - 58 - 2 31 448

Ex entering on them whilst one introductory or preparatory to an actual transfer or exchange of property - Ex - An agreement to exchange horses next week 18ew - 2 31 448 - 18ew 285 -

A contract thus is executory when one performs immediately & the other is trusted - as a sum of money & a promise of repayment

If A promises to give something to B. in case he sh^t
serves it reasonable It is not left to the choice to give
or not. the law will determine when he ought to be
satisfied 2 Inst 402 foliated M Wallace.

The genl rule is that a contract is not apportioned excepting
if A. owes B. an ascertained debt & to owe it & it is agreed by
the three that C. shall be B's debtor instead of A. a C. promises
to pay B. money remaining on account after he has paid B 244

I have agreed to deliver a large quantity of my article &
a part only one delivery vendor is bound to pay for
me until the time for delivering the whole less
expences if the whole is not delivered regular reciept given
the part delivered but if he elect to keep such part
he must pay the value of it 116 L 256 & vendor
is liable to a new contract for not delivering the
whole L. per 116/-

When a contract for the sale & delivery of chattels specifies
the quantity price & time of delivery, powder is not
entitled to recover less than a quantum meruit for a part
less than the stipulated quantity, the vendor has consented
to an alteration of the contract as to time & time
of delivery, 15 March 1822, 18 Oct 1823, amounting of
Pounds & Pence 386, plus also 60/- H. Rs 14.81

If the contract is to pay when the whole are deliv'd - a part are
deliv'd & the rest rejected without his fault the consumer
for new part - 32 L 14.58

Nature and kinds.

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All contracts according to Pow. 234, 6 - are express constructive or implicative - implied. The usual distribution is into express or implied.

An express contract is one in which the parties stipulate in express terms what is to be done or omitted. Pow. 236 -

Constructive contracts are such as are such as are said by construction out of instruments or express agreements & are different from what the instrument purports to import - that is - they differ from the formal terms of the instrument or express agreement from which they are derived. Pow. 236 - Cro. J. 137. 663 - Re. lot. 122. 1 Leon - 24 - Recy. 14 - Green - 113 - This however is better said is an embranch of express agreements being rendered constructive from the words used - though this is recited in a deed of conveyance respecting the grantor's interest in the subject amounts in construction of land to an agreement or covenant that he has title according to the receipt. Pow. 237. 1 Leon - 122 -

To construct in a marriage settlement agreement that whereas A is to pay £ 1000 - for the marriage portion &c - we holden to be covenanted to pay that sum. Pow. 238. 3 - Green - 57. 2 Eg. 6a - 65 - To an exception in a debt indented recd amount to a covenant Ex - Lease by indenture of a farm excepting a particular store - this is said to be covenant by lease that the same shall not pass by the demise. Pow. 233. 9 - Cro. E. - 65 - Plaintiff 67. 1 Leon - 117. 1 Rot. 1. 2 102 11 £ 500 - 6

Nature and kinds

It is now however not to be denied that lease must not consist
leaves possession of it - for lessor is a stranger to the fact
excepted notwithstanding the exception is something arising out of
the thing demised. It amounts to a covenant that lessor
shall not disturb lessee. *at supra* - Ex. Lease of land
conveying a right of way over it. 1 Pow. C. 289. So lease of
a house excepting a right to keep two dogs. *per contra*
it is by inference 1 Leon 324. *idem per alio*. also whether a condi-
tion is necessary. 1 Pow. 241. 1 B. & S. 81. *contra* 232. *Stat.* 196.
1 Mod. 470. For hence lessor has an interest in the subject
out of which the right excepted arises & therefore is considered as
operating that right - so a reservation of rent in a lease
indicates amounts to a covenant to pay it on the part of the lessee
1 Pow. 242. 60 & 657. 1 Q. 57. *contra* 407. *Stat.* 10. 60 & 599.
20 & 136. 1 Ross 518. - So a lease without improvement
of waste gives the lessee the trees growing on the land demised
1 Pow. 243. *Notab.* 122.

So if no obligation is imposed that the obligee
will that the obligation is a certain part which he will not be bound to or
good consideration that the words are obliges & not obligors for
such appears to be the intention of the parties - 1 Pow. 244
1 Land. 246.

Implication or implies contract, are those
which are neither expressed in terms or raised by an inference
from the terms now in an express contract but which arise
by operation of law out of the nature of the case 1 Pow. 245
Ex. Labor done or goods sold without any express promise to
pay - consideration is implied 1 Pow. 246

Where one of two debtors has since compelled his pay
the whole debt it was holden that he could not
compel his co-debtor to pay any part ^{of} to the rest
of the debt against him - but namely his proportion
of the debt 116 £ 39^s - no interest on the pug^d 106 £ 6^s 5^d

If a strictly uniform Allegy that he will not be liable after a
certain time it is no defense unless specially pleaded &
given then 116 £ 38^s & in all cases if the time reasonable
the master must be specially plead & so when made void
by Statute - if made by statute it may be given in
evidence under the 1st type - 116 £ 38^s w 5 £ 11^s 2^d
2 Camp 272. obligate before court 300 126 or less than

If a note or other simple contract is secured by a mortgagee
deed which is a specialty, the nature of such simple
contract is not altered E 17 Ward 101.102. 2 Stark R 334
3 C.Law R 330 S.6.

If two or more by the same instrument severally purvey
to pay the contract is several & not joint several 28 C.S.70
in this case the debt as several, severally purveyed -

If a contract may exist without being by deed tho'
a seal be added yet this will not prevent its
existing as a simple contract. Ex: Agent authorized
by party to make contract for principal & he makes
such contract by deed 5 Hill 113 Stay Part 179.

Nature and kinds

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Ley one takes without suffering the benefit of an infants lands
there is an implied promise to account for them - or if one
delivers his goods into the keeping of another the latter is thereby
engaged to take such care of them, as the less requires -

Prov 146 - So if a Person leaves money or a sum of
the less requires a promise that he will pay the money to the other
the 2d. Prov 256 -

He who grants his lands to B the less implies
likely grants a right to come on the land to cut &
remove them. If he grants to B land surrounded by his
own he implies grants a right of way to it (Prov 256)
Slaves 25 - Wounds 322 - 3 Brink 65 - 23130 for otherwise
the grant cannot be enjoyed 21108

If he holds over without opposition
for longer the former is by implication of law considered as
tenant from year to year (Prov 135 - 250.) There is a tacit agreement
to renew the lease in this manner -

In Equity new contracts
are sometimes implied - Ex - 3 purchase of land bearing land
only a part of the purchase money becomes bankrupt
the land stands charged with the residue & the balance by an
implied agreement, trustee to that amount (Prov 257 -
1 Br Ch 428 - 3 lets 272) but if security is taken for the
purchase money 1 Br Ch 428 -

Contracts are either absolute or
unconditional - Prov 206 - 8.

An absolute contract is one
by which one thing is entirely absolutely & unconditionally

Original handwritten

1138-11

In consideration of a clear & present promise to pay by Nov 25th
a conditional contract is one
the obligation of which depends altogether or in some respect
upon some uncertain event upon which it is to take effect &
departs - enforced or abridged - Pow 259. 2B. 54. Shawell Thus
if A agrees to purchase land on condition that B returns from
India by next day, the condition suspends the obligation
to perform till the day, if B does not return by the day,
the obligation to purchase is annulled - Pow 260. 2B. 201

If a sells property to B
on condition that is a certain amount B shall pay for
it £ 10. & in another event less £ 5. the contract is
conditional & governs the amount to be paid (Palk 712. Pow
260) If A agrees to give B for his loss as much as C shall
judge it to be worth - his obligation to pay is suspended till C -
decide the value - then he is absolutely bound to pay -
Pow 261. Dz 91. 6.

Unlawful conditions

The effect of these varies according to the nature of the contract
& the condition annexed to it (Pow 261) If an unlawful
condition is annexed to an executive contract the contract
is void - thus if one is bound in an obligation conditioned for
the performance of some unlawful act as to kill a -
the bond is void (Pow 261. 2B. 206. 2B. 175-85) So if
the condition is for the commission of unlawful act or
the omission of some duty legal Ex 75- 95- 24 Stat 109
2 Wils 264 - 5 & 265 - 411) while void - so if the condition
militates against public policy or the general welfare

If a writer agree to remit a part of the debt upon cond^t
that the residue is paid the writer must be strictly compelled
with 1 Cowen 202. 3 Bell. 1481 20 John. 78 17 do 169

If A. agrees to work for B at such wages as C shall day
he comes - if B refuses to refer the writer to C. it may give
him in great expense² ~~cost~~ on the contract. See if B is
ready to refer - and see on the contract & he^s decision will
furnish ~~lamb.~~ the rule of damages. 5 Wend. 206
q Pot 326,

Concluded from the trial on June 20, 1865, that
the public authorities of the City and State had
no right to - yet did the city authorities -

Custis's minister not entitled to costs in Chancery on Bill
to set aside the illegal contract - public policy requires
only the execution of the contract to C. E. C. H. 445 1 Person
276 3 Nov 23 1770

Unlawful Conditions

1136211

- Ex - instrument of trade - Cap 183 - 1818, 31 - Burn 2225

In such case, the law frees the obligor from the penalty but he should be under a temptation to commit the crime - 1 Pow 262

But if an unlawful condition is annexed to a conveyance or without executing the condition generally is only void the giftment is good & the estate absolute (18 Pow 261 s 31, 157, Col 206) here the offeror may be under no temptation as now the law serves to him the estate without performing the condition 1 Pow 262.

But this rule holds only when the parties are in pari delicto - it is otherwise when the offeror is not party's minimi - as if a mortgage is made to a minor - in such case the conveyance is void & the innocent party protected - In the former class of cases this is - when the contract is executed the condition unlawful is without having had no effect for the law will not enforce it - In the latter - that is - when the contract is executed if both parties are minors the law will not aid the offeror to defeat it so that in both cases the law leaves the parties as it finds them -

As bonds in restraint of marriage are void (Cap 183 - Burn 2225) the condition being unlawful - so of bonds for withholding evidence (Cap 184 2 Vent 109, 2 Wils 344) - so of bonds to secure a reward for prostitution (if given before hand tho' if given afterwards they are valid (Cap 182 - Burn 579 - 571, 2 Wils 287, 2 3 V. 432))

Impossibile Conditions

In the former case they are an inducement to immorality in
the latter not -

All conditions repugnant to the nature of the
contract are void - Ex - Settlement in fee on condition on
condition that George shall not alienate the land which is
against law & the estate is absolute. Pow 262 - 180 2596
2 Vols - 283 -

Set a bond or warranty before George not to alienate or
lest the property is good for this does not disable him to alienate
but merely subjects him on his bond if he does -

Conditions on Conditions

Le possible or impossible - Possible conditions require no
explanation - Pow 263 -

Impossible conditions are 1. such as are so
at the time the contract is made or 2. such as become so after-
wards. (Pow 264) If a condition possible at the time of making
it become impossible afterwards by the act of God or the Law
being annexed to the contract except the contract is not
avoided by the non performance. (Coh 206 - Pow 264 - 444-6)
Same rule if the conditions become impossible by the act of
the party granting the interest - Ex Settlement on condition
that George in 6 months go to London on George's behalf
- George dies within that time - Settlement becomes absolute
(1 Will 263 - 180-98 Nov 25 - Pow 446-) for the estate is
executed & cannot be diverted except by descent of George
- Auter Deinde - Lest grantee on condition that
grantee shall within 6 months perform a certain voyage
for Grantee & the voyage is prohibited by Stat 1 Pow 444

If an agreement is in the attorney & one branch of it
cannot be performed the other must be 32 £d 4s5

Contract to build a house by a certain time in a good work
manlike manner - work done after the time & accepted
by the P. H. shall still remain on the consumer
counts as he may in all cases except the condition in
the contract is one that goes to the entire right of
action. The condition to be done in a good manner
is no more than the law implies, is every contract 32

L 312

Where P. H. has had a benefit from the non performance
of a contract Q. H. shall have the benefit of it where
he is bound for non performance on his part 4 Pages 579.

The party who is not chargeable with a violation of
a contract should do the best he can & for any
unavoidable loss occasioned by the failure of the other
he is entitled to a complete indemnity, also if he can
procure articles which were to have been delivered in
a reasonable time he is entitled to such damages
as will completely indemnify him for the additional
expense & time & injury resulting from the necessary
delay. It will be unreasonable by requiring to pay
the articles when he would be permitted him to recover
all the damages, such as way of workmen being idle
occasioned by such neglect 4 Pages 573

Impossible Conditions.

1833

2 P.W. 218 - 3 Br R.C. 389. 8² - 269. Sat. 198 3. 100d 51-1 Glemons
impossible by an act of law - & of a feoffment that feoffee shall
in 6 months bring feoffee & within that time feoffor marries
another - here performance being impossible by the act of feoffor
he can take no advantage of non-performance - the estate
becomes absolute in feoffee -

But if such a condition is annexed
to a contract ^{agreement} & becomes impossible by the act of God
or the law the obligation is void & obligor discharged (Paw. 265
417. Sat. 170. 1 Boult. 209. 14 N. 638 - 2 4431. 126-8 - Col. 206) & the
rule is the same if the condition become impossible by the
act of the party in whose favor the contract is made as the
obligee - leaves if obligor disabled himself to perform the
condition for no one can take advantage of his own wrong
(560 21) For the contract being voiding no advantage
can be taken of it till there is a default in the obligor Ex-Bond
with a condition that if it should appear at such a court
- he dies in the meantime obligor discharged (Paw. 265-)
2 N.R. 240 - Paw. 417. 20 - 8 Col. 92 - Col. 2 - 374 - Col. 206 - Sat. 198

If the obligee either prevents
or dispenses with the performance of the condition the obligation is
discharged. 14 N. 638 102 - 688 Doug. 659. 264 - Wats. 9. 333 - 1236
3 N. 590 - G. 1. 333 - 1. L. 19. 1 Esp. 253 -

If the act of a stranger is
made necessary by the terms of an instrument as evidence of
a condition being complied with & he arbitrarily refuses to
cert is the obligation released? (2 4431. 574 - 560 23 - 12011452
412 710) note the case of insurance against fire - but that

Impeccable Conditions

was the case of a condition precedent 672710-

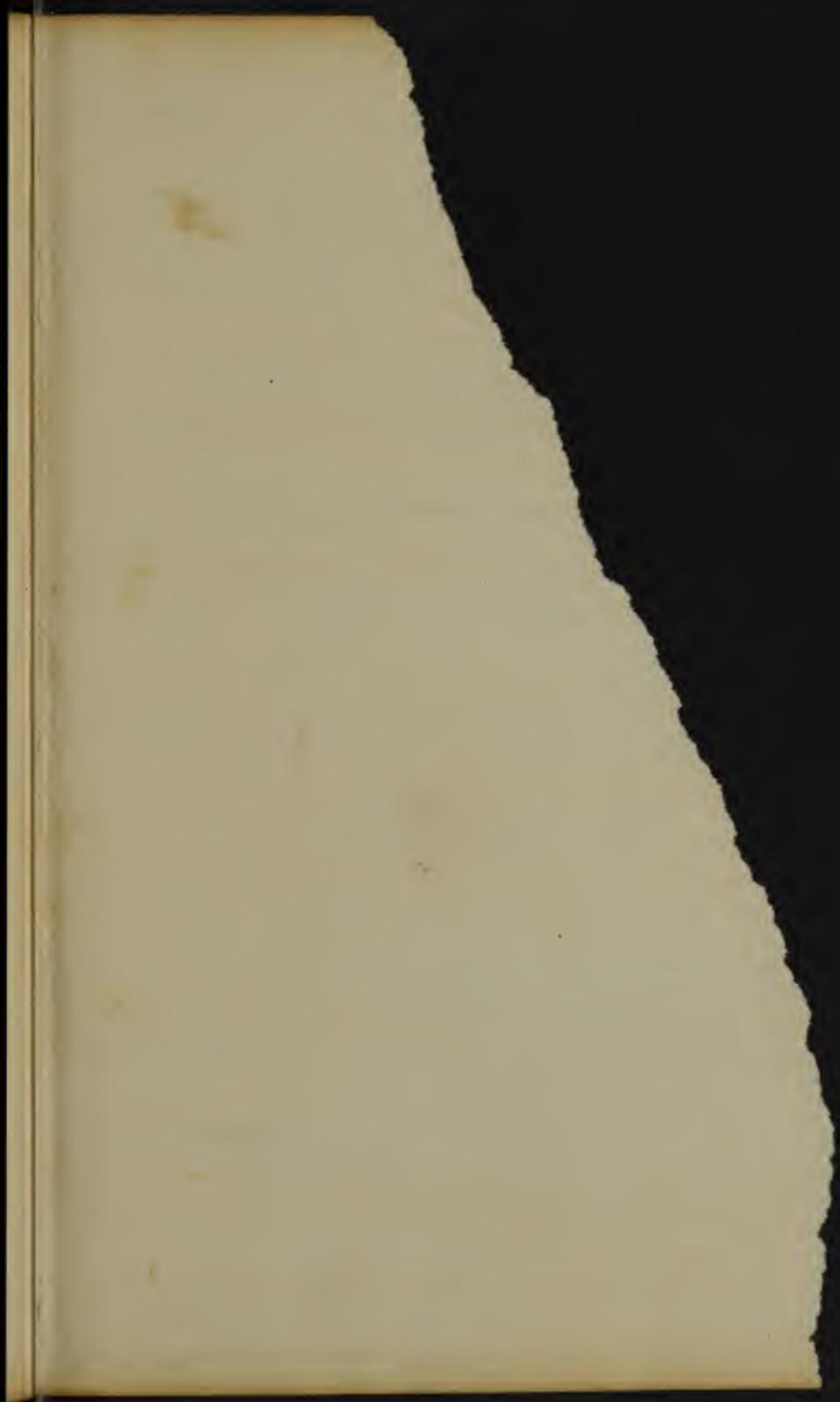
If the contract contains a clause making the soft judge whether the obligor has been or will be in compliance with a condition, precedent - the clause is void & the judge can decide whether there has been a compliance
258408

If a bond is conditioned for the performance of one of two things & one becomes impossible the obligor is still bound to perform the other - unless the impossibility was foreseen by the obligee 1201-242 - (see - 1 Ban 398- 5 Co 22- 10 At 20 26 W Jones 29 contra) 2 At 170 - Ex. To convey house or land - house burnt by lightning.

If the condition becomes partially impossible by the act of God or the law - still the obligor is bound to perform that part which is feasible - Ex Bond for a lease for 60 years & Not afterwards prohibits leases longer than for 40 years - obligor is bound to make a lease for 40 years 1 Ban 448- 2-21 - Plaud 284 - Co L 252-219. 2 Br Ch 731 - Psalm 552 2 1731-163-581 - Bond - 209-11 - 3 Br. P.C. 389. 2 H 254

If the condition is impossible at the time of making the contract its operation depends upon its being precedent or subsequent - A precedent condition is one which must be performed before the right or estate depending upon can vest or arrive - ~~and~~
A subsequent condition is one by which a right already vested and to be defeated 2 8156 - Co L 206

Rule - If a precedent condition is impossible at the time & the right or estate which





Condition that it should pay D. \$100. at a future
day if upon an account there taken of stock in trade
it should amount to \$100. but if it amounted to less
than to pay \$50. At at the expiration of the time had
extinguished trade & had no stock - Held that he
was not liable to pay any thing 27 to £ 256

Simon Church. Died. July. 9. (Sunday)
1849. at 7th o'clock. P.M. A.E. 55.

If a written contract be signed by two it be said
that "it is agreed" the one shall furnish & the other
perform or pay this instrument a promise to perform or pay
5 Mill 257 1/2 Lame 319 6-13 East 63 1/4 Bus Cor. A. 12
East 139 1/2 do 352 Ch. C. 86

is the subject of the contract can never vest or take effect
- it is said all rights for no right over estate keeps till the
condition is performed 1Baw- 266- 23157. Col 205-

If the condition being impossible at the time of its occurrence becomes
impossible the right or estate & suppose becomes void
for it cannot vest - So if a precedent condition is
unlawful for no right can be acquired by performing an
unlawful act - 23157.

Let if a subsequent condition is impossible
at the time & it has no effect - the contract is in law
unconditional (1Baw- 266- 23156 Col 206) as a bond
with condition that obligor shall go to work in a day -
the bond is singular for in case of a bond the penalty is
delictum in praesenti & a void condition can not defeat
it - so if the condition is unlawful - 23157.

But in case of
exonatory contracts or bonds - if the impossible condition is
incorporated with the obligation instead of being considered
as rendered the whole obligation is void (1Baw- 267. 18 Col 172)
for there is no delictum in praesenti - no distinct penal part
extinguishing a present debt - it is otherwise nature of a condition
precedent.

Statute of Frauds

There is a distinction between written & unwritten contracts
introduced in certain cases by 29. Geo 2- 1Baw 2- 23159-

Statute of Frauds

Our Stat - so far as it extends to the sume subject is substantially a transcript of the Eng. Stat-354-

Under the Eng. Stat -
found in - the following contracts or agreements will not
support an action or agreement made without Law or Equity
unless the agreement or some note or memorandum
of it is in writing signed by the party to be charged or by some
other person by him authorized (1 Pow 270 P. 6 to 216 - 18a) 2
231 159.

1. Promise by Est or Cدم to answer out of his own
estate for any debt or duty of his testator &c if not in writing,
does not bind him - 2. A promise by one person to pay the
debt of another defendant or mischance of another - 3 Sales
or contracts of land tenements &c or any interest in, or
consuming them - That is - sales or contracts for sales -
- 4 Contracts not to be performed within one year from
the time of making them - 5. A claim of the Eng. Stat relating
to the sale of goods of £10 value is not material here - It extends
as well to expiring contracts as to contracts of sale to be performed
immediately (Rob 111 - 2 1781.63 - 7 N 14 -

By the Eng. Stat it is
provided that all persons who let or lease of lands &c or of any
interest in them shall operate as lessors or estates at will
only - except leases for a term not exceeding three years
paying a rent of two thirds the improved value (Rob 2407
June 2 - 1781.63 - 33 16 - The former manor holden
tains from year to year - 800 3 - In st. all land leases due
in case 1761 - 216

written agreements whether written or verbal the St. whether
specieles or sample contract are not to be considered varied or
materially affected by fraud testimony 1 Brown 250 4 D&M 518
11 Ad 2d 9 folios 292 146 18 Ad 115 3 Camp 57

this rule however does not exclude fraud evidence of fraud
or the want or failure of consideration nor the enhancement
of the time for performance or a waiver of the
performance of a written sample contract 1 Brown 250

if one sell another a horse & require its return 2nd with a
receipt which does not be a warranty 17 Tunc 2000 if
let a bill of sale is given which contains a clause without
warranty or engagement leaving him no remedy except had
on the first representation 1 Brown 482 15 C.L.R 40 28a L
627 Hancn Old 4 Tunc 777 Riddings & Dower

A contract for the sale of articles in articles to be
hereafter manufactured is not within the Act
of Lower 21 & 22 Eliz 3 7 & 8 & 9 & 10 James 3 & 4 18 & 58

Promises by Executors to - it has been said that if Es^r de hec
apts to commence his new principal he will bind him - or
apts to constitute the consideration - & so a contingent to himself
so as to transfer the debt to him personally (Nos 26 & 27 vols)
you not law - No 25 vols 1 Nov 206 - no question - The debt
& not transferred to him personally - that is - his private capacity
by appts - The mere possession of assets subjects him as
Es^r only - besides the Stat does not proceed upon a distinction
between agreements upon a consideration & agreements
without any - But proof of appts will clearly not necessitate an
implied promise to leave the Es^r de personally £ 42,690 -
Once however entered by D^r King executors Comp 288,782,550)

Administrators once

submitting a claim against him to an attachment was once
held in bolster to be an admission of appts £ 42,691 - consulted -
5 Nov 1845 vols - For an adm^r may be anxious of ascertaining
the amount or existence of the claim, without knowing that
he has appts -

But if on such a question the administrator avowed that
the ~~adm^r~~ shall pay such or sum he shall not afterwards
deny that appts to that amount against the other -
it is equivalent to a finding of appts to that amount
182-453 - same rule as to Es^r D

One hold on that payment
of interest by Es^r was an admission of appts to the amount
of the principal or rather that it cost the executors probands
on Es^r now overruled £ 5,225 -

But acceptance of a bill

Promise by Executors

of exchange by executors £ $\frac{1}{2}$ is an admission of debts - Ch 82 -
12. 1749/1822 - 3 Wils 1 - 2 Stat 1260 - 2nd 1725/1744. otherwise
third persons might be deemed responsible - So is a transfer
of holder's £ $\frac{1}{2}$ Ch 11 - 3 Wils 1 - 2 Stat 1260 -

In Engg. the other
promise to be liable in writing he is not bound until some
sufficient consideration be shown (as forbearance) it is
simple contract only (74 N 550n Rob. 202 - 1 Nov 126) for the object
is to make £ $\frac{1}{2}$ to liable at all events & in all cases when the
promise is written let in those cases only in which before the
date he would have been liable on his own promise -

(74 N 550n Rob. 202 - 1 Nov 126) tend to make the £ $\frac{1}{2}$ personally
liable on his promise the writer there must have been con-
sideration, which bound him as £ $\frac{1}{2}$. Thus there can
be no consideration Rob. 206 - 2 Stat 1260 - Ch 846.

The consid-
eration must appear in writing (5 East 10 - Rob. 11b - 267. 6 East 30)
and agreement - quia i. e. as every writing containing an
express promise is a specialty - See qu.

To take advantage of this clause
Def must have been £ $\frac{1}{2}$ when he made the promise (Rob. 201 -
aub. 330) Ex promise gone in consideration of being compensated
£ $\frac{1}{2}$ afterwards is not without the blot - not necessary to
any action on the promise for the Def. is at all
subjected de bonis propriis Rob. 205

To answer for the debt of another

Under this clause this

81 den 120
790 - 350 m
783.66 350

John Russell.

Cananæ. Lithographed, Oct. 1st 1848, July 4th

There are 3 distinct classes of cases in this subject. 1 Where
the promise is collateral to the principal contract but
is made at the same time & becomes an essential
ground of the credit given to the principal debtor.
such promise is not void for not disclosing a cause
the consideration moving between the creditor & original
debtor is suff to support it. 8 John R. 39 Second &
Reddington. q East 348 Stark & Sill -

2. Where the collateral undertaking is subservient to
the creation of the debt & was not the indument to
it the subservient liability is the ground of the promise
without any ~~distinct~~ unconscionable indument. There must
be some further consideration beyond having an immediate
respect to such liability for the consideration of the original
debt will not attach to this subservient promise. 8 John R. 39
20 N. 94 H. v. Hutchinson q D. 201 Chester v. Bushell & Co. 1st
Mair & Watt -

21 C. L. 145

20 C. 32, 185

3. A third class is when the promise to pay the debt of another
arises out of some new or original consideration of benefit &
harm moving between the newly contracting parties. This class
is not within the St. 1st and 211. n. 2. 8 John R. 39 -

Promise to pay the debt of another

general distinction is to be observed - if the promise made for the benefit of another is original it is binding tho' paid
- Lewis *v* collector - D. Recy 1857. Camp 227. 1 Wils 306 -
Esq - 101 - Burn 1888 - In the latter case it is a promise
to answer for the debt of another - in the former it is not - Note
the word *collector* is not used in the Stat.

A promise is said to
be original - 1. When the third person for whom debts it is
made is not liable at all to the promisee so that there
is no debt due on his part - Rob. 209-16. Peake's Ev. 212. Bull
281. Burn 1921 -

2. When his liability is extinguished on
the making, the promise. Rob 223-4. *Contract Law* 253 -

3. When there is a new
consideration arising out of a new & distinct transaction
inuring to the promisee (Rob. 232. 3 Esq. 286) so that the
debt is only the promise of what is to be paid for another object
- But when the promise is merely in aid of a subsisting &
continuing liability, on the part of such third persons as to
promise credit from him is where the promise is ~~where the~~ ^{intended}
~~promisee~~ to furnish merely an additional security
it is collateral & therefore the 1st. ~~2nd~~ ^{2d} Day 457 5 Wils 205
2 Wils 94 - P. 306 - L. 2d, 1886 - Sat. 2d. Esq. 101 - 13 or 158 - 1,743,120
Camp 460 - Peake's Ev. 212) 1. Esq. - A says, to a merchant
"deliver goods to J. S. & charge them to me" or "deliver them & I
will pay you" the promise is original for J. S. is not liable
at all A is the original debtor. 2 R. 81. 1743120 L. 2. 1087
Rob. 207, 16 It is not a promise to answer for the debt of another

To pay the debt of another

But if a new and definite I.S. stipulates 2 if he does not
pay you I will it is collected (Coop 22) Then the intention
is that the charge should be against J.S. the receiver -
142 H.R.C. 2^o Co. 1786 Oct. 25 - 2, p. 102 - it is therefore
a promise to pay L.S' debt in aid of his liability &
to procure credit for him.

Co. "subly my mother with
trust L.S' will see you paid" - has been collected as
evidence of the intention as in the last case - (cited in
2 H.R. 80 - Rob. 222 - L.R. 224 - 1 Bos. 168 - 1 Ab. 58, on October
L Mansfield one held that such a promise before the
delivery of the property was original there being no
liability on the third person - cited Caus. 228 -

This opinion

however has since been overruled 2 H.R. 81 - Rob. 5-6 209, 18
decided - Whether L.S. can fictitious intention is not
correct - in other words whether the intention is not
that the promisor shall be made the debtor in the
first instance - at any rate it is now held that
when the promise is in that form the court in collecting
the intention are at liberty ~~and~~ at liberty to consider
the circumstances & the condition & situation of the parties
1 Bos. 158 - Rob. 212-23 - 2 D.R. 80, 81 on Bull.

Lo "I" you do not know I do you
know me & I will see you paid" - L.S. is to be paid
charged. 2 H.R. 80 - Rob. 101-2 - Rob. 210 -

Lo a promise
to me that in consideration of your letting a house

of promise to pay B. a sum due him from C. if B will give up
a bill he has on C.'s goods &c. within the t. b. g. c. L 14th
nid 3 Decr 1086 3 Febr 86 1 March 211 C.

2. In 3. 1. 1. in 2 H 80.81 think the debt only I. Minster the most
recent one. But, the distinction there made for is a recent one
1 March 211 a.m.

The question is, to whom was the original credit given?
17 Decr 115 a.m.

Said in 5 March 1236 cites 4 Nov 1162 that a promise to
pay the debt of another is not within the t. if founded on
a new & distinct comit^t or where A. is called "opposite"
transfers to him by B. promise to pay a debt due to C.
from B. To where promise is found. of the promise done so. just
between us 10 March 1163 21 Oct 145

Said in 5 March 1236. that a place of t. found is bad for
if it is necessary that the promise shd. be in writing. It
is a fact the pf. must write under the seal. specif
ceremony contra 15 C. L 46 4 Bz L 547 law of Henkylige

The promise being entire if void in part is void in toto
21 C. & 21 E. 1457 & Kent 223 Ex. a promise to pay the
rent due if landlord will release party of claimants which
is good & also to pay the comming rent which is void
by St. the whole promise is void -

Off. having agreed his selfe & Capt. A. for debt of with
Off. consent conveyed all his proprie to Capt. A. upon
condition to pay Off. the debt due from A. the Off.
within comming his ex^{re} Table that day promise was not
within the St. 32 C. L 366. In b. a levy on the good
perhaps to be recouery otherwise no consideration for
Off.

Repay the debt of another

to 2d he shall red since him is collected - This is
undertaking to answer for the default of another
to require him to do it - for 2d - I have on the instant
Rob. 210.32 - Ld 2d. Sett 248 D 3d 1085 - Nott 606
2 Lot 152 13d 25

As a general rule a promise that
a third person shall do an act for the not doing
of which he would be liable is collateral - 2d. 1085 -
Less if he wants not be liable - Ex. If a promisor
has sufficient consideration that C. shall pay &
& not that he will pay - C not being bound to it
the promise is original - for C is not liable at all
Rob. 223 City 6ib 202

So if an agent buys goods at auction
I do not name his principal the agent is bound without
writing (Book E-23 - June 1921) for he contracts as for
himself - Demands to make the promise collateral it is
necessary that the party for whom the credit is
should not only be liable but that he should be or become
liable at the time when the promise is made - Rob. 2d 3d
1085 - Rob. 219. 221. 82 - 1d upon the score without
which principal makes or approves - see 2 East 325 and

If the promise is by one
of several persons already ^{fully} liable it is not within the Statute
for it is not to pay the debt of another - Ex. Promise
to pay debts by one of two debtors - Rob. 229. settled 206 -
Com. 262 - 2 East 325 See 2 East 484 -

When a creditor

To pay the debt of another.

to the destruction under this stop & court the sume is
original the common action of Mandat et fieri facit
not stating the special agreement in respect for the
promiser is the original debtor - Seen where the
promise is collected - there a special acceleration
is proper & necessary - Robt 216 - Burns 5'3 - 8 Lexi 263
2 Dec 1852

2^o If promise in consideration that promisee
will extinguish a debt against a third person it is
original for it is not in aid of a continuing liability
in the third person or to obtain credit for him - Ex. Burn
A. L. 1884 & I will pay the debt for him Burns 1888 - ergo
admitte 1 N. E. 130 - qu Robt. 223 - 1 N. E. 130 2 East 325 -
tell you - whether the rule is not correct - What is
the promisor to pay? not the debt of A - for it is
extinguished - the former debt against A is only
a rule of damages & the consideration is merely sufficient
of being disadvantageous to promisee -

When promisor
is in holder of the debt of another is clearly not within
the stat. This is a promise not to pay the debt of
another but to pay for a transfer of it - Robt. 226
1 N. E. 130 - 2 East 325 -

3^o Sir William es before
when the Chancellor came to collect his goods for
rent - the Doff to whom they had been assigned
promised to pay the rent if off would not collect
- holden good tho' he remained liable - off held

14 A. day to A. furnish C. with goods & will
guarantee the payment tho' A. is not bound by guarantee
yet if he does B. is liable on his guarantee
34 C. L 21 per centum July 1st also 75 and 80 m

2 Jans P. E 312
5 Decr. 1 H. 328
5 Memb. 598

A promise by one person to indemnify another for
becoming a guarantee for a third is not within
the L. & need not be in writing & the assumption of
responsibility is a suff' coninc - 4 March 187

It applies only where promise stands in the relation
of sSurety to another who is the principal debtor as if
it promises B on a supp consideration passing
between themselves that a stranger shall pay or
do any other act this is an original undertaking
4 Will 179. but if the third person wishes to obtain
credit of B. as forfeiture of a debt he owes him
& C. comes in as his sSurety the promise must be in
writing

had a bill which began up in favor of Deth on his
promise to pay (Bur 1880- Recd E 215 - 2 East 325) the
consideration in this case was a set of arms as
distinct transaction & made to promisor (Bur
1880- Recd 232 - 2 Esp R. 86) It was in consideration of
the fraud being discovered in Deth's Senior -
The debt was only the measure of the sum to be
paid - L at 25 - Day 369. 3 Esp R. 86 2 East 325

Where

one is under a moral obligation to pay for a benefit
received by another or from another with kind terms
or Medicine furnished or performed. The overseer
afterwards promise to pay for it - the promise
is binding. A promise made by a principal to his agent to indemnify
the latter for a loss sustained by him in the performance service
rendered by the unprofitable act of another is not within the st.
1st. 16.519. 1. Miscellaneous Petites

A promise to pay a certain sum in consideration of prom-
ise; without leaving a suit against S.S. for a particular
battery has been held as original for there was
no debt due from S.S. - It did not appear that there
was any debt due in him - see 2 Day 457. 11 Wts 305 -
2 N 204 - Recd 208-33 - Recd E 214 - The promise
was not for performance of the same debt S.S.
was never liable to pay the particular sum promised
or to the particular debt which the promise intended
to create -

There must exist a debt or duty, ascertained
or capable of being ascertained at the time of the

Miscellaneous Rules

promisee - but, at suit - to bring the promise within the State -
But a promisee to pay, on consideration of promisor's
staying a suit brought against J.S. - for a debt is collateral
- The debt subsists, against J.S. & no lien or interest
arisen or abandoned by the promisee Vol. 208 - 88
2 W. 1874, June 1887 page 742201 - See 2 1/2 A 312 -

Promisee

that in consideration of promisor's forbearing an action of
tresser against J.S. - the promisor would pay the claim
or within the State 2 Day, 455 - same debt - It is to
pay the same sum which J.S. is liable to pay -
the cause of the debt

I will have the promisor to
in consideration of promisor's withholding the suit
- Would it not be good in law - as a retrahit disables
officer to bring another suit - so that the liability
of J.S. is extinguished - as it is not good - here a
retrahit has no such operation -

Promisee to pay the
debt of J.S. if off. would release J.S. taken on
mine property & collaterals I suppose - for the debt
continues & J.S. may be arrested again - Deems
I conclude if he had been taken on final property
& were thus converted released - for releasing would
discharge the debt - June 24 1882 - 1/2 55 - 8.525
P. 9221 Root 37. com

Some have supposed that when
there arises a new consideration a court cannot rule to

as between diff^r Appliers of a due in action by
exprop Applier from the same person the
Applier in time will be preferred tho he gave
no notice to the Subseq^t Applier or debtor
But to secure the rights of the first Applier
as between him & the debtor the latter must
be notified for if he pay the original creditor
or subseq^t Applier before notice of the prior
Applier's claim payment will be good still
230. 11 M^r 488 4 do 450

Under credit & given on the date of payment the buyer
can neither take or sue for those under his hands
either paid or unpaid than since 13 Nov 225 176.11
303 3 Nov 84 6.826 360 400 941. But if there be
an absolute delivery without receiving the price
the property passes 6 Decth 110 8 Nov 247 - 700 400
13 Nov 1764

Miscellaneous rules

to answer for the debt &c of another is good whether
the consideration moves to provision or not out of
a distinct transaction & whether the debt is
discharged or not (8 Barn 1887 ^{act 5} c. 6. sec 6 - 832) as
for forbearance of a suit - but this is not law - see
2 Wils. 94 - No. 232 - Bull 281 - 2 Day 457. 7 M 201
Stat.

would be nugatory & the rule under it the same as
at L & C (vol 232) for the person promising must not be
good at L & C without consideration - & the promise is
writing it is not good without consideration. Vol 20. 42 -
246. 50 Stat 458

A written promise to pay the debt of another
& he does not pay it himself - is advalorem by promisee's
accepting payment forbearance to the debtor. R. 11
297.

A judicial bankruptcy debt - excluding the necessary
monies will prevent the application of the stat. Ex. Under
placed & money paid into court. Vol 288. Sec. 8. 244

When according to the
above rules the promise must be written to be binding
it is not necessary in deciding the case that it is
written - sufficient if it appears in evidence. Vol.
450-202 Reg 450 Bull 279- 1867- Barn 1896

This
rule holds as to all contracts untempered by the
stat - for it introduces a new rule of evidence only not
a new rule of binding. Laws 289 - 2 Vol 146. 12. 11. 540 - 43 & 655

Stamp documents to the declaration or promise in writing Robt-77. & 7 R-350 are due in £s as written contracts containing express promises are specific - See if such contract is executed in case of another action. Robt-202 n 2 Wils 49. 3 Will 579. Reg 450 - Greater strictness is required in a contention in a declaration - But it is necessary in delining as in pleading less to allow a consideration -
7. R-350 - Robt-202

A bond contract to pay the debt of another & also to do some other thing is within the strict - in toto - for if one part of an entire contract is void the whole is so - no recovery - 2 Vict- 223 - 7 R-201 - Robt-212 n-173 n- 251 - 1 W 2-130 - 3 W 1-4205 n Both parts must be declared or -

III. In consideration of Marriage

This documentates not to promises to marry - this case good by bond - Bell 280 - 179. 12 R-2-286 - 1 £tra 24 Robt 100 / Lec-65-411 cor. 411 / Robt 190

It relates only to agreements in consideration of marriage - that is - such as are made in contemplation of marriage settlement or family provision. Pow-277 - 17. P.W. 618 - 67. Ch. 526 - Robt. 190

What to be binding must be written or signed - no exception to this rule except in case of just performance - Formerly doubted whether a bond agreement of this kind would not be good if it was stipulated that it should be reduced to writing Pow-279. 2d Ed. 1 Ch. 6a. 135 -

If it appears from the bill that the defendant was not in
writing & no circumstances are alleged taking it out of
the H. or otherwise it passes otherwise if it must stand
this matter is left or must rest upon it by way of respondeat
in his answer if he admits the original & does not
rest upon the H. he cannot make the obj & the
segment recd must be passed 2 Decr 1783 Salient 664
2 Brd Ch C 566 557 111/2d. R 230

and the same thing is true of the
other two species. The first
is a small tree, the second
a large shrub, and the third
a small tree.

In consideration of marriage

1148

But such stipulations it seems receive no effect
as do not have the case out of the State - 1 Pan. 281
Prob. 402 - 3 Lett. 504 - Rob. 796

If however such stipulation
is made & the execution of it is prevented by conduct of
either party & the same does take effect Equity will
receive - 1 Eq. Ca. 19 Rob. 198 - 156 S² L². 526 - 1 Rob. 618 - But
this is done by way of relief against fraud & conclude
I suppose furnishing marriage is a sufficient consid-
eration to support a settlement made in pursuance
of it after marriage or to support a promise in
writing after marriage - 1 Pan. 236 - 2 Lett. 116 - 1 Ves. Jr.
196 Rob. 193, 200

A letter signed by one party, or a writing
written in the State - 1 Fonth. 139. 2 S. & C. L². 32 - 3² - 315. 1 Pan. 287
1 Ves. Jr. 330 - 2 Kent. 361. 8² L². 550 - 3 Lett. 503 - Rob. 105, 90
- but it must appear that the other party accepted the terms
untenanted in the letter & acted in contemplation of them &
proceeded to marry otherwise it is not binding - Thus, where
the party to whom the letter aforesaid was ignorant of the
promise contained in it at the time of the marriage it
was not deemed. 1 Kent. 179, 93 - 283 V. 65 - 1 Pan. 237, 90 -
9 Rob. 3. Rob. 107, 92 -

A letter written to one's own agent
stating the terms of an agreement already made by
party has been taken sufficient - 3 Lett. 503 - Prob. 121
This is not a written agreement - but a written mem-
orandum of it - written evidence

2^d must furnish distinctly the terms of the covenants
deed it is executed - 1 Feb 179. 8^o-8^o-560 -
Area - 126 - 1 Acre - 12 - Rod - 106 - 91 - 18000 290 - See
2^o Ch 17.

After the sale of lands &c

Lands or a^d c^r interest in them, 1 Root 59.

Cutting connected

to land if sold in whole or part, of revenue is not
within the State. Ex Gross, pravinc 2c Nat 126 - 6 East
502 - Below N.B. 862 - 11 East 862 - 1 Corn. land - 11 - 80
Pecah 2 214. 1 Lee 65 - 2 Zay - 182 - 2011 - 202 - 120. 397.
2^o a part agreement between the owner & occupier
of the land that each shall have a certain part of
& the ends is good Lemb. 1202 - 397. for the end is not
considered as land

In the 2^o 20th part term for three
years is good - Such agreement however appears to be good
independently of that provision. See Gross.

Formerly doubted
whether a part contract made to bind or not if it was
part of the agreement that it should be written. Pow. 279
1 Nov 157. 1^o Ch 19.

Now settled that this makes no difference
1 Pow. 281. 3 - 16 Ch 370 - 1 Nov 221. 6 3r. 3. 6. 45 - Rot 147
P. Ch 1102 2 3r Ch 553 - 65

Part revenue to pay for land

If A. holds lands in trust for B. & agrees by just
3 Day 48⁴ to sell them & account for the annuals this agreement
is not within the St. 10 Mend 439 - But if the person
buying them agrees that by just that B. shall have
them again on repaying the said contract is within
the St. 5 lower 162

There there are one entire contracts to do several
things some of which are within the St. & some
not the St. applies to all y^t M^r 20^s. 1 C^r 10^s St. 87. 3^t y^t 36
10 Ba^c h^b 4^s 2 C^r 44 33 C^r 109

111

Not agreed by the owner of land that if another will prosecute
it & another he will renounce all claim to it can not be
given in evidence at law in an action brought by such owner
against such prosecutor to recover possⁿ of the land 15 March 588
sic 6th 6th 62 R 586

For the sale of lands.

1162

bought is good, Raut 70-4⁹. But our court of Errors
has decided that the law does not imply a promise
to pay the value - One decided is that a good
agreement by grantor at the time of granting to pay
for deficiency in the supposed amounts was within the
Stat. Raut 62-1 Raut 58 - Contract since Specie Not with-
standing that case notes were given for the purchase money
& the promise reciprocal. Aug. 1800 - reversed by 8. of Err
on last principles Day 23-

But hard agreement for
the sale of lands are binding in some cases the Stat.
notwithstanding -

Such agreements are good under the
Stat. if reasonable consistently with the spirit of the
stat's rules of evidence - There is no inherent infelicity
in the contract the difficulty is in proving it - the Stat
merely introduces a new rule of evidence to prevent
fraud & perjury -

1. Where there is no element of
fraud or perjury in enforcing the agreement the
case is said not to be within the Stat. spirit of the act
- Ex - 2^o one bill filed for specific performance the deft -
in his answer confesses the agreement - no element of
fraud or perjury in acting on such proof 1800-27 A. 92
Mar. 22 1.44 P.M. 6th - 208-374-2 Ct - 100.55 - 3^o 3 - 03.12 -
600 - 2 Br. 6th - 568 - Amb - 586 - See 6 Vols Jr. 37. 554 -

Besides
says Bow 292 - the contract is in writing - that is - in the answer

With his sale of lands

In this case if Dft - does not insist on the Stat - he is clearly
bound - Rob. 158 - 23r Ch. 500 4 Ver. 7-23 - Peck. E 216
- So if he properly submit to a decree of performance - Rob 158 -

¶
Df^t alleges a written agreement evidence of a period one month
legged of Dft - does not insist on the Stat Rob 158 -

¶
2a - to the
first example - if the Dft - by admitting the agreement on
the Stat by plea - can the agreement be enforced Rob 158
Rob. 158. 374 - Peck. E 216 - see 3d line 3 - that Equity would
decide if the Dft has insisted or not performing it 2 Ch. 553 -
Dft did insist on the Stat by pleading yet he having
unjustly refused the agreement in his answer the plea was
overruled & the ~~copy~~ agreement denied - 2 Rob. Ch. 508 -
In 582 - 600. rule laid down generally that an agreement
unjustly refused of the Stat - is denied under at law - that
is - that if Dft having unjustly refused the agreement by answer its
obligency remains on the Stat - he is not liable on the
agreement - 2 Rob. 158. 63. 4 Ver. 7-23 - Peck. E 548. 23
Rob. 230-158 - 23r Ch. 563 -

So in 23r Ch. 553 the plea
of the Stat was allowed by Rob. Plaintiff his the agreement
was not denied - but the decision was on the special
circumstances of the case Rob. 569 the agreement was
incomplete - only general bids by way of instruction
to an agent - particular terms not settled - Lounshen -
identique was taken - See Rob 160. 2 Ch. 569 63. 46.
45 - 2 567 here the agreement was not enforced

A. leased to B. a house for a term of years during
the term it was agreed by part that if A. would make
certain repairs B. w^o. pay him £5. additional and the
balance of the term ~~should~~ ^{were} being unexpired - Held
that the agreement to pay the £5. was not within the
H. instrument or no additional interest in the house
passed to B. he having the same interest as at first
and the agreement to pay for the balance of the term
was not an agreement not to be performed within one year
as no time was fixed for performance by Landlord -

B C L 216

An agm^t to sell land does not imply a license to
enter & cut trees, nor a license to enter implies an
authority to cut timber of others 35 331 - So that if timber
is cut owner of land may recover the value 3 March 108
So where tenant for years of mill & machinery recovers
the machinery & it was sold as part of the land he has
that the purchaser agrees to title to him 20 N 826

For the sale of lands

1583

It remains granted recd at York 17th Nov 150 - M^t 21
said Robt 38 he says it remeable now nearly established
that Dft. may demand & plead the Statute & Act 54th 48
Nov - men - see Rule 216

Possiting on the Statute present
arising on the agreement the rule itself that exception
in the answer takes the agreement out of the Statute
seems arbitrary & groundless - & if the court pros-
uing the agreement to be by force & enforcement in
one case - that is not pleaded - why not in the
other? a little change of saying in the one concerning
the other -

It is also question whether a Dft.
in Chancery on a bill for specific performance of a parol
agreement for a sale of lands & is bound either to
compe or deny it in his answer (York 1583) M^t 21
by Dr Mansfield that he is excused by P. Newbouys
23rd M^r 556 - M^t 21 - see Robt 156 50 2 15th 155
see 24 Ver 24. & 25th of the same opinion that
the only effect of the Statute - as to parol of the agreement
is to prevent theft - from passing & aliunde 23rd Ch -
557. 1 York 17th Nob 157.

So that if Dft denies it & cannot
prove by parol 2 Ver 29. Dr Mansfield Hendiwches
stomach'd - Newbouys held that exception takes
it out of the Statute - Dr Roplin - Eye & Etton of the
contrary opinion 2 17th 1568 - because compelling a
Dft to answer a parol agreement does him under

a temptation to commit injury - What then does not this objection hold equally in every case in which Dept. in Chancery is bound to answer injury by Dept. - we note what the Stat. intended to prevent - Besides this objection might be urged against compelling an answer even if the agreement were written - in which case however the Dept. is clearly compelled to answer - If he is bound to answer or deny it follows that his answer is to make the agreement out of the Stat. & thus insisting on the Stat. will not avail him - Vol 100 per if it would not give him compulsion to confess or deny? 1 April 1811 -

G. H. H.

also been written in Eng. Statute, only to a part of a
covenant for sale of lands &c - that he deny it by answer
which shall be bounded by it if a previous confession out
& out can be proved - & 3d - 1407. 18m - 293. & cannot
be law -

Upon the principle that there is no answer
of fact or injury in the form of a part contract for
purchase of lands &c at a vendue sale before a master
in Chancery under an order of court it is binding
1 Pow - 285 - 18m 215. 20 - 171. 31 - 283. 18m 42 224 - Rob - 115 -
How could this be if the Stat. made the present
contract void?

So a part agreement between the solicitors
in Chancery in a suit between mort^g & mort^g was
elective - 13m 8. 1. 334 Vol 115 -

A. with B^c money purchase land of C. it is said that a
resulting trust to be cannot be created by friend. 1 P W 321
Prich 84 Rot 94. Counter 1 Solum R 145 n 8. c. 1 Solum
6 153 2 Vent 361 1 Nunn 367 3 Solum 221 n 10 11 ad
94

Via 3 Day 481 ad.

If there is a bona fide contract to convey land & nothing
paid & concurrent afterword claim he has no title a few
days before to convey he is liable to sue damages. 2 Wend
399 - 2 Bl 1078. Said if he fraudulently refuse to perform
this in addition to the actual loss sustained 3 Clericus 115
7 Abbr 358 13 ad 105 11 Abbr 127 he shall pay the
difference between the agreed price & the increased value
2 Wend 406

To put the vendor of real estate in fault licensee
should demand a deed wait a reasonable time
at then present license to receive it & Hand 200 etc.
B Comewt.

A. agreed ^{in writing} to sell B several lots of
land. Afterward by past the parties ^{wishes} agreed to waive
the contract as to one lot held to be void for
the contract of waiver is an attempt to substitute
a past contract for land in lieu of the written one
Dy C. L 34. The court seems to think that other generally
written contracts after their exⁿ may be altered or varied
by past yet this cannot be done where a Statute requires
the contract to be in writing & seem to doubt 7 M 591
& Sup C Thrusw 4 Rocke 1000 & 21

According to general English law, in a penal contract respecting an interest in lands, he is infarable from unimportant facts in proving which there is no danger of perjury.

Ex-Sale of lands by absolute deed but vendor at the execution gives an obligation to the vendor to the exact amount of the consideration received in payment & pay, the buyer does not amount for profits - he has no just claim interest on the obligation from the vendor, but it is said a trust is implied for vendor that is he is considered as mortgagor by virtue of a penal agreement implied or inferred. See 21 N.Y. 65 - 21 N.Y. 427, 26 U.S. 270, 2 Littell's 526
Sect. 60 - 21 N.Y. 424 - 1 P.W.S. 111, 275 549, 1 N.Y. 108

2^d Other exceptions to general rule introduced by Stat.
B.B. 600 cedamitio on the principle that can not made
Nov. 294 to prevent fraud ought not to receive such
180th. 171 a construction as would or would protect
a beneficiary if the act is to be literally
interpreted -

Note - 31. So that when a party by not performing
Nov. 192 a penal agreement will sustain a greater loss
19 Nov. 296 on the other than would arise from a mere breach
812 - 600 of the agreement itself - he is in general bound to
1801 - 221 it in damages - Therefore a loan agreement performed
Stat. 783 entirely performed on one side at the request or
2 Attr. 100 with the consent of the other party will bind the latter
1601 - 275 &c. A loan to be by penal for 20 years - Re-enter under
---- 619 the lease & incur expenses in enforcement

94 For the sale of lands

The contract is enforceable in Equity Wm 203 - 161 & 3 - 272
Bar 4 Blle 299 - 18 Bar 159 - 7 Bar 341 - 3 67 & 4 ob 120
Rout 77 - Otherwise he might take advantage of his own
privilege for his accepting or permitting past performance
by B - Not intending to perform his duty is in itself a
fraud - 2 Wm 87 433 - 2 Eg Ea 48 - 2 67 57 - 2 67 - 561
18 Bar 403 - 18 Bar 297

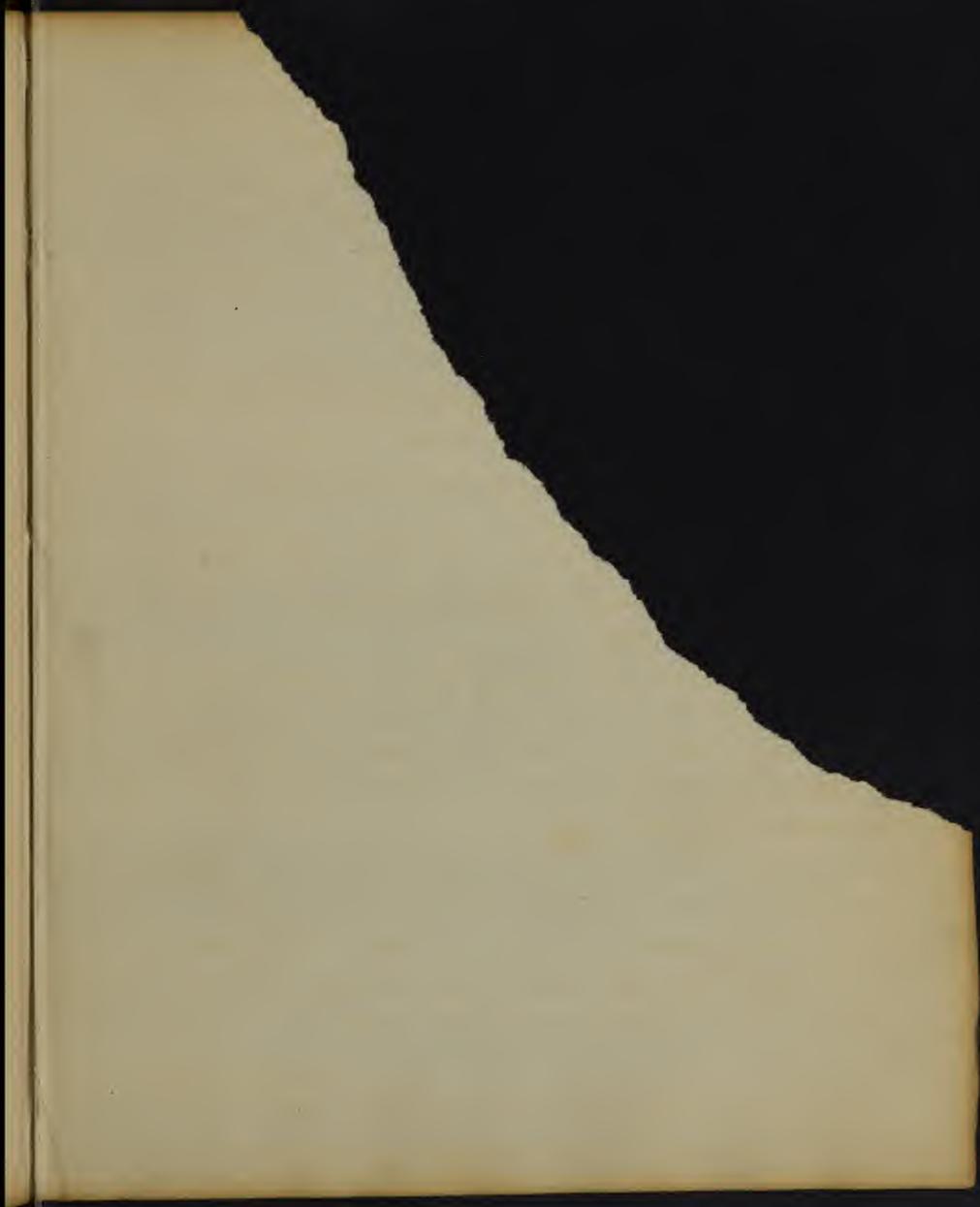
Believe the acts done - amounting
after presumptive evidence of the agreement & thus
the danger of judging is diminished Bar 309 - qu whether
this circumstance bars any action? Rul 181-

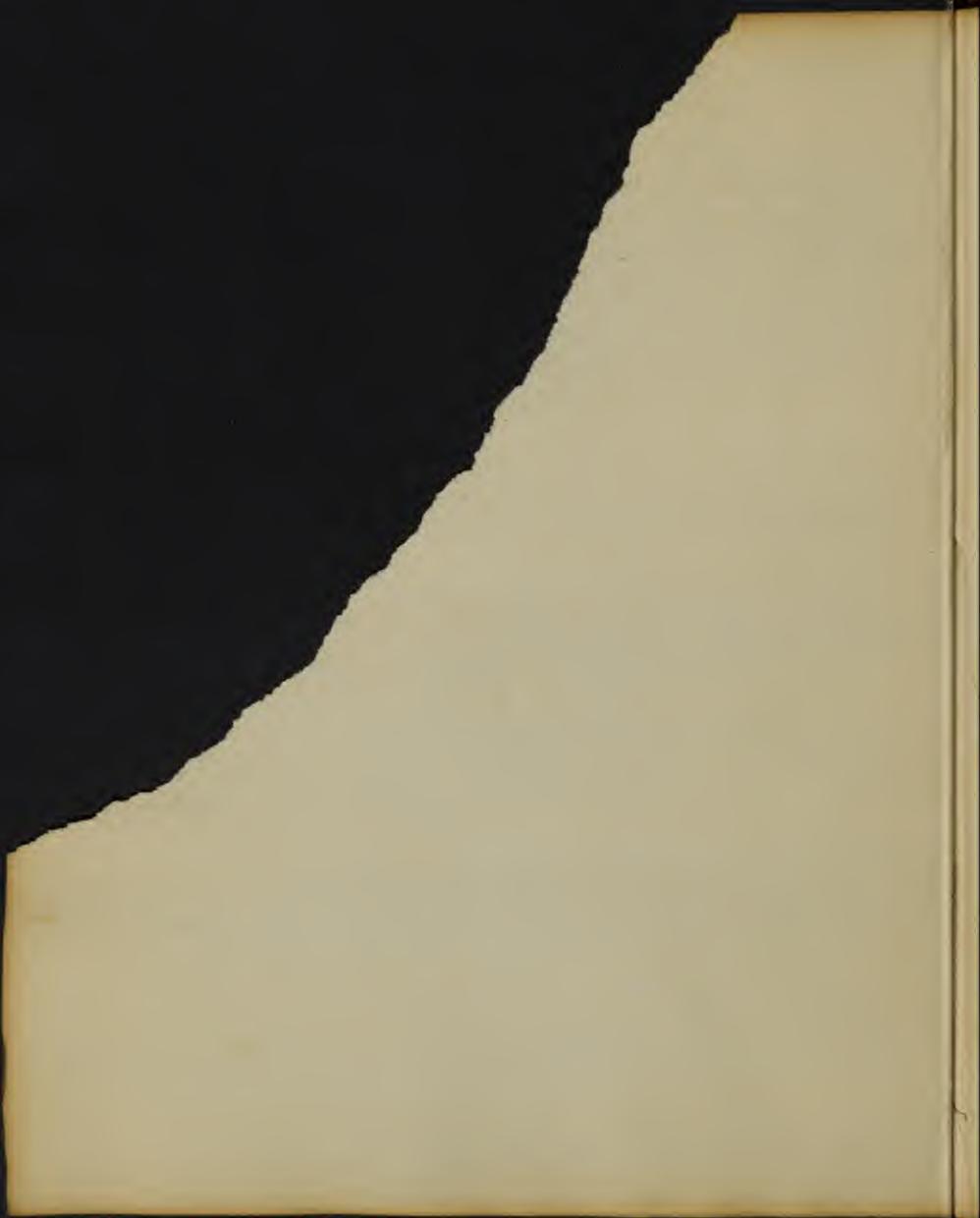
In rule
a case the agreement has been enforced tho the terms
& it was not precisely settled by the execution Bar 297
2 Eg Ea 48 - 12 - 5 81 - 5 23

< Delivering possession of land in person
of parol agreement is a sufficient past performance by
the vendor - 1 Bar 299 - 2 Blle 263 - 4 55 - Bar 604 - 2 Eg Ea
48 - 6 13 Blle 102 - Rout 77 Rul 142 - Rul 283 - 2 Blle 66 402
3 - 6 6 518 - 7 Blle 747 -

not taking possession under
the agreement is deemed sufficient notice to an
subsequent purchaser Lemb - so that the first
purchaser under the parol agreement will hold
against him 1 Bar 202 - 161 365 - 2 365

To payment of
money a part of the consideration of a purchase by
parol agreement has been held to be such a





for the sale of lands.

1155

but performance is to take the agreement out of the Statute
Paw 304 - 26183 - 5th 525 - 5th 2 - 4th 7-20 - Nov 63
222-18-64 - 15th Oct 185 - see s Vols 3-213 Vol 188-55 2d Ed
2d Ed 64- 8th 32- 1st 22- 2d 22 - Tomlin 82

Surety of payment of sum £100-500 17th Nov 185 1 Nov 59,
this is not in itself performance - not subsequent to a
in itself performance or performance of the agreement but
a mere solemnity in making the contract a form in
stipulating - In this case see, Paw 208 - damages
may be recovered for non-performance - que la payment
of sum does not take the case out of the Statute 26183
4th 7-20 Vol 188- The amount which may be recoverable
recovered back -

Question whether the receipt of the money
in itself performance may be proved by parol 18 Paw 304 if not
the rule itself runs sole Vol 183 - in 2d Ed - 4 - it was proved
by parol

Agreement in itself performed by donee will
accrue against the heir of donee Paw 304. 2d Ed 2
Gibb 300

But to take the parol agreement out of the Statute
this ground the act done must be such as would prejudice
the party claiming under the agreement when forced
- Unjust performance by one of the parties will
not allow the other to deduce 7 Vols 241 - Oct 188- 62
6th Ed 25-

and the act claimed to have been done in
part performance must be such as in the opinion

of the court would not have been done with a view of
to perform this agreement - Scimus it is not considered
as past performance - Et Liepoo agreed to take a new
lease & contained in possession - 3 Verf 378 Rob
139. 51. 62. 18aw 309. 13a 74 2 Br Ch 561 3 Ch 4
Lumb 586. Pr Ch 561. 1 Fourt 175. 1 Br Ch 412 1 Ch 12.
6 Br Ch 45.

Giving possession is sufficient - Scimus giving
directions for conveyance - going to see the estate &c
therefore merely introducing to a conveyance -

1 Fourt 15. 50t. 2 Br Ch 45. Rob 139. 62. Lumb 586
13a Ch 412. 3 Verf 34. 379. 8241.

Marriage Treaty
is not considered as past performance of a penal
agreement in consideration of marriage - as between
the parties to the marriage partly the terms & such
without they are not to have effect unless the
marriage takes place - Do consider marriage
then as past performance would take every case
out of the Stat. & leave the contract as at C. L
18aw 309. 13a 4. Pr Ch 561. Thru 38 18W 618 Rob 196

But

it is said that a penal contract in consideration of
marriage by a third person as a letter to one of
the parties is taken out of the Stat. by marriage
if it takes place with his consent - Scimus a liquid
would be practised on the parties to the marriage
18aw 298 2 Verf 379. 2 Decem 201. 18aw 209

Conversation money paid post^r takes a valuable
impairment made in eq^t. takes or care out of the
st. 2. L. 6. & 97. London at Law 2d. Dec 221

A & B by fraud agree to exchange sums
A gives to B. the note of £. to be forfeited if A -
does not exchange sum - A then refuses to
exchange - lets that A may recover of B the
money he recives on £³ note because the contract
to exchange being by fraud is void for want
of consideration 15 John. 5 104

Where an by a fraudulent representation of being the owner
of land induced another to lease or let upon it in the
expectation of becoming joint owner the latter ordinary
of the fraud may abridge the contract & release all the
common costs for work & labor & it is no objection that
the contract is from instant in law & not in writing,
16 N. 2d 25. 2 Ibb. 415 15 T. 1. 803. 13 N. 2d 54.

Part performance of a fraud agreement will not take a case
out of the Ct. unless the terms of it distinctly appear or are
made out to the satisfaction of the Court. 1 John. 6. 131 2 N. 4
1st 1 Dec. 1. 459 3 Ath. 503 b N. 470 Com. 586
1 N. 2d 221. If there is performance it is on the
ground of fraud 1 John. 6. 284 1 N. 2d 1 Bro. 417
b N. 2d 276

Latterly compensation in damages is made instead of specific
performance where damages will answer the purpose of indemnity
John. 6. 284 3 N. 713 1 N. 159 2 8th. 1 Dec. 1. 349. 1 N. 22.

For the sale of lands

" 1857
10

To where the wife was allowed by the husband during cohabitation to receive the interest of a certain sum which he had before marriage agreed to settle to her separate use - The agreement was adjudicated, binding on the ground of past performance - Paw 204 1 Mer 293. In such case husband is bound by his own past performance - no prejudice to the wife. Note the plea denied on the special circumstances - so cutting down timber in pecuniae of a marriage agreement was held as a sufficient past performance - Paw 204 - 2 Eq Ca 29.

In Court of C. have held that past performance in paying money does not take a wife out of the Statute of Frauds by S. & G. that a complete performance on one side by payment of money etc. Art 396. that C. have since however held payment sufficient - 2 Day 25 that payment of past & making repairs takes it out of the Statute.

Upon the principle to prevent fraud even a written contract respecting an interest in land or any other subject may be contradicted by proving the honest agreement if there was a fraud in the execution of the instrument - Ex. Grantee having obtained a deed referred to as executed a deficiency according to the agreement - Rob 130 3 Litter 389 - 5 Mer 423 - 1 Acad 188 P.R.W. 620 - 2 Litter 203 Eq Ca 20 Paw 204 case of a marshman 3 Litter 369 -

So much for the contract may

For the sale of lands

leprised where it is only indorsement to an action
for fraud - for the action is not on the contract.

2 Dec. 531 - & the same may be done in case of
mistake in the operation - 16 Gen. 18893 No 1457

2 Oct. 203 - Pow. 433 - 2 Oct. 284. 6 82 671. R. 899

So a written agreement
as above may be construed by a party to rebut an
equity - 24. Written agreement afterwards discharged
by party 2 Nov 299. Nov 240 Pow. 295. This rule
is peculiar to Equity

In Enr. by 16. 2 - In effect it is a waiver
for one & confirmation lies on a party to sue & the agreement
as to the rest may be given in evidence to ascertain the
decisions. Esp. 20. 165 - 8 M. 32. 112 1249. 1 M. 875 18 11314
147 39. 235 -

At 2. 2 - plaintiff would not lie for suit the
defendant wants 2. 1 29. Ruth. 54 - Doug 234 Feb. 284 18 81. 97
1 M. 875 1414 Oct 2 242 - 3 Lee 150 & Wood 152 Bell 157 -
Pech. 241 - 8 Vicen. 234 - 16 Gen. 6. 529. Debt being unidivided
as the higher remedy - goes to the principle

In 6. such

a claim does not create a tendency at will - it is a mere
liability - but Assumption lies on a question called
the cause.

4 Dec. 228 - Peculiar must not be tendered in this case.
Esp. 20. 152 228

117

Within one year

Contracts not to be performed

within one year from the making - in a promise to pay or
do an act two years hence

Holden that this clause does not
extend to any agreements concerning lands or tenements
Recd 245 Nov 157 sec 8 42 32.

Because I say, are the
preceding clause has made all the provisions intended
to be made as to contracts of this kind - suppose that a
particular contract of this kind completed or partly performed -
it is binding & conclusive - for they are in general of no
effect whenever to be performed - 1 East 89.

Where the
performance is to take place on a contingent event
which may or may not happen within a year
that contract is not within the Statute Ex - On the
return of a ship Recd 250 Recd 96 Recd 250 Recd 500
Aug 1583 Pay 216.17. 2 Jul 19. Hold 230 Paid 214
To to pay on becoming due - 250 - Pay 216.17.18 -
To a promise to leave a sum of money to be paid by
with Recd 250 Aug 1283 -

To make the contract binding
there is no need of the contingency happening within a
year for the contract is good or not at its time - 22 25
Aug 1281

This clause then extends to contracts only
which according to their express terms are not to be

performed within a year & Bunc 1281 - P. 214

and even as

to these it seems where the promise is made upon a continuing & continuing consideration it is good tho' 3 years & to be performed within a year from the time when the consideration is complete - Ex Poco promise to pay for boarding ones child for two years notwithstanding Nov 80 - 2d year -

Rules applying to all or several of the contracts contemplated by the Statute

The construction of the Statute is the same in the equity as at law - the remedy or relief may be different B.R. 600
3131430 - 12 March 22

Intention of the Legislature governs both & the construction is merely the means of discovering that intent Powers

"Agreement note or memorandum is writing" Which any writing & suppose which is intended to furnish evidence of the intent is an "agreement" or note or "memorandum" within the Statute As a letter written themselves is a "note" in Bond 179, 1 Pow. 283. Rob. 105- 2 Br. Ch. 52 - 85 218 - 2 Tith. 503 - H. 201 - 25822-

A letter written by one's own agent stating the terms of an agreement made - however sufficient & B.M. 503 - Rob. 121 But it must distinctly furnish the terms of the agreement - See no. 1 Bond 179. Br. Ch. 560 - Sec. 426 -

A promise created by implication of law is not within
the St. 1 Novt 180

To bring a case within this clause of the St there must be a
specific express agreement not to be performed within any case
10 Libus 244 7 locca 864 10 Menda 428

Under the P^t doctrine of St. Ch. 363 there must be some decisive act
of ownership to constitute an exception. Def' employed Off. to
make him a wagon & before completed employed a third
person to put some iron work & a till upon it. Held rest
to be an exception²²² 25. Co. L. 43., 2 Bask 44. 5 H.
rec 1 East 192. Bac. Agreemt. C. 11 C. D. 390

If the memorandum do not specify the price with the law
presume a reasonable price was intended and it does where
the contract is executed 2 Deane 121 n.2. See if necessary
only 25 Co. L. 73. 211

From order several articles he is bound to receive more such
all are due but if he does he must pay for these recd
15 March 224 16amp 53. 6 G. & M. 114 q B & C 386
for by recording a part he disclaims the entirety of the
amount written 1127

She an authority to convey lands must by St
lent in writing & yet an authority to contract for
a conveyance may be by part. 5 Mill 112 34 Wend
235 Story on Agency 237. 237

W.C. 2

12th 12 Jan 290 - Rob 100 - See 2 Eng Ca-17.

But the terms

may be made certain by reference to other documents
or extrinsic facts 13a Ch 218 Rob 107 1861 p 220-2 200-
238 - Ex An agreement to convey for the same price
2 plots -

It must appear that the other party accepted
the terms & acted upon the offer 12 April 179. 2 P.W. 65-
180 - 287, 9 Mod 3 - See there is no agreement -
5 Vir - 527 - Rob - 107 - 92 -

Then the writing refers to
something extrinsic by which it is to be made certain
if the subject is not made sufficiently certain by the
thing referred to itself so far as may be admitted to
make it more so Rob 108n Yes Jr - 286 - Ex - Reference to
a deed which does not contain the subject or terms -

An instrument
written or purporting to be made by one of the parties & containing
the terms is a sufficient note 4 Hyl 14 - 312 577 5 Jun 1921
And the consideration or what is promissory note
writing - the agreement to be in writing
by the Stat - 5 Est 10 Rob 118. 207 6 Oct 1921.

Deed to contracts
for the sale of goods under the Eng - Stat "note" or
"memorandum" only is mentioned 6 Est 17 "agreement" -
is not

An instrument intended as a deed but failing
to operate as such from the omission of some

1122

requisite or by a change in the relative situations
of the parties may be considered in Equity an agreement
or evidence of an agreement - Ex - Bond to one
intended wife to convey land to her 2 P&R 243. Rob 109
being as a debitum in presente it is a bond
avoided by the marriage -

An agreement in respect to the
property & agent of both parties hence a necessary
in a steward book is no evidence of an agreement
between landlord & tenant 1 Dth 407. Rob 109 -

Signing - What?

Not only a subscription in usual form but the name of the
party to be bound written in any part of the instrument is
intended to give authenticity to it is sufficient signing
Wells 118. 2 Eq-Ca 52 - Wm C 3 Chanc 503 - 18ew 283-93 -
1 Dth 157. Ex J. A. G. agree with C. D. to sell him 3 acre &
not subtitled - it is sufficient Ex 25 Hme 299. P. B. 3rd
Rob 120 - 3 Lvs 56. 9. 8. 2. 149. 2 Rob 238 - 12. 149. 2 190 Lvs
where the name written in the body of the instrument
is not intended to give authenticity to it. Ex - A having
agreed to lease by bond wrote instructions for drawing
the lease in these words "The lease to be received by
to pay taxes &c - no signing by me" The name is not
intended merely to explain the stipulations not to authen-
ticate the instrument 1 Dth 160 - 10th Wm, 18ew 285 -
Rob 121 -

1st Jan 24th^{m.s.} A memorandum for the sale of land to be valid within the Statute
106t 142 not only be signed by the party but must contain all the essential
requirements of a contract that they may be made void from the writing
itself or some paper to which it refers without the necessity of resorting
to parol proof 12 Nov 1666 at the price to be given 10th 12. 1 Feb 1672
Prest. £60 11 East 142 3 Brow 318 3 Ldms 419 P. £6 374
Gilt E. C. 35 2 New 415 1 Nov 279 1 Ldms £6 280 1 Nov 8326
For an agreement cannot exist partly in writing & partly in parol
1 Brow 92 Every thing being left writing in pencil by the writing leaves
extinguished & destroyed 1 Ldms £6 282 2 Canon R 185 1 Ldms R 4144
& where part performance is set up to take a case out of the
Statute the party cannot resort to parol evidence to aid the
written memorandum 1 Ldms £6 278

The authority of an agent to sign may be confirmed orally.
25 C.S. 170.

1158

It seems to have been formerly supposed that alterations made by one party with his own hand in the draught of the agreement was a sufficient signing - 1 Ver 220
But this opinion is overruled 1088. 11 - 1 Inst 166 - Pow -
284 -

But the signature of one co^r subscriber witness (the following the witness) is a sufficient signing to bind him to any stipulation recited in the writing on his part - Ex - Whenever a marriage articles recites that the mother of one of the parties had ceded to edict £1000 as a portion & were subscribed by her as a witness she was holden to be bound tho' not in form a party - for the signing was intended to give authenticity - 1 Ver 6 - 1 Wils. 38 - Pow 284 - The subscribing witness may be considered in such case as having adopted the agreement Rob. 123 -

Who must sign

Sufficient if the party against whom it is signed if there is evidence of the concurrence of the other - Ex - A draws an agreement & procures B to sign tho' he himself does not - B is bound - 1 Br. Ch. 584 - 9 Ves 2^d 351 - 2 Ch. Ca - 2^d 164 - Pow 286 - 2 Ver 373 - 140. Ch. 20 - 2^d 32 - 7 Ves 2^d 255 - Rob 115 - 124 - 17 - 96. Abul 1165.

In the last case it is said it is also bound for requiring B to sign - made B's subscription authorized by A - & a signing by the

We must sign

Procurement of one party is equivalent to a signing
by his agent - Rob 287. 1 Eq-Ba-21- 2 Ch. Co 164- gen-
S 201

the party not signing being a bidders for specific per-
formance he is bound to make for better recognition
2 virtually affirms the agreement as to him self
1 W 32. Rob 124

So auctioneer's subscribing the highest bidders
name to the condition of sale is said to be sufficient
signing for both parties - In thus subscribing he is
said to act as agent for both 1 W 280 & 12 594 Bu 1921
= 8 M 15. con. s that this is not an agreement in writing
that was a sale at auction of the aftermath of land -
The rule is helden to apply only to the sale of goods. 1 Eq 2107
1 Rob 206. 1 W 12 344. 2 W 9 21. 2 249. Rob 115 Rob 1. E 27.

It has
been doubted whether sale at public auction are
contemplated by the Stat. - at all the transaction being
public & so no danger of injury (Bu 1280 & 12 600 - Bu 1921)
but it does not appear by any strict authority or any
reasonable rule of construction that such sales stand upon
a footing different from others.

A printed name may be a
sufficient signature - As a bidder bids of parcels with
his name printed 2 Rob 238 - Rob 1247 for the name is
printed by his procurement & delivered as his signature -

It is not necessary that the
authority of an agent signing for his principal

Selman Church: Died July 9. 1849. between
7 & 8 o'clock. P.M. A.E.S.S.

1849

A held a lease of B. Acre. he sold his interest to
C. wrote his name upon the back of the lease &
affixed his seal & delivered it to D. directing him
to write an assignment over his name & deliver it to
C. which was done. Held to be void without Statute
of Limitation. —
S. 1849. —

A held a lease of B. Acre. he sold his interest to
C. wrote his name upon the back of the
lease & affixed his seal & delivered it to D.
directing

Si uero pietatis in nobis, non uero
in nobis est sed est in nobis non in nobis
in nobis est in nobis non in nobis
in nobis est in nobis non in nobis
in nobis est in nobis non in nobis

1168

should be in writing - The Statute requires only that the agreement be in writing signed &c - Hol 45- 3 Wom 2-
127. qd 87 p 257.

Not necessary that the identical contract
stated should be signed - sufficient if it is acknowl-
edged by a writing that it is signed (Hol 121- 3 N. 8 th 318
2 Atk - 503) &c - Letter to one's own agent stating the terms
of an agreement is ready made -

The bare writing of
an agreement with one's own hands does not dispense
with the necessity of signing - P. H. 770 - Hol 121

Necessary Consideration

A contract is an agreement upon a sufficient consideration
to do or not to do a particular thing - 2 Bl 442 \$1099

According
to this definition consideration is the expense of
every contract - the material cause of a contract
that in consideration or on account of which each
party is induced to give his assent 1 Pow 330 - 2 Bl 143 -

If two kinds - good &
valuable - The good consideration is that of kindred
or natural affection between near relations. 2 Bl 297, 444
3 Co 83 - 1 Pow 361 New 127 - 1 Doubt 537.

Such a consideration
in contracts executed is sufficient as between the parties
&c - Granted by deed from father to son - But as against

consideration.

Conditions & bona fide purchases generally deemed
sufficient & set aside - 231297-

and an executory con-
tract or instrumentation may be enforced in England
in many cases 1 Pan 361 - 1 H & 427. 2 B.W. 176 -

2. Valuable - This consists in something valuable as
money marriage etc - 231297. 36033 - Barr 482

These
may be made in either of four ways - 1. By stipulating
thus "Do it or do not" - is loan on bond or promise - sale or
contract expressed or implied to pay -

2. "Devises at
discretion" - as where labor or service is to be performed
on both sides or forbearance on one side & some act
on the other - or mutual forbearance. "

3. "Pecuniary" as
an act to be performed for reward - 4 "Do it & receive" the
counterpart of the letter or the letter inverted as
giving or agreeing to give something for an act to be
done 231444 - Pan 355

Contracts under the present
view are divided into two kinds - 1 Special - 2 Simple
7 M 257 -

A Special contract is one which is entered into
by a broker writing sealed 231465 - 295 Col 171

A simple
written by the Eng. law is a contract by word or

A court of Eq't will never decree performance where the
contract is ~~mutual~~ not mutual. Tolman Ch 282 Secm 111
1 N.Y. 86 180 Adpt 13. 2 N.Y. 415 - 9 1268

In regard to limited interests an ~~accord~~ under seal imports a
consideration at Law 1 N.Y. 427 3 P. 111 222 6 N.Y. 622. Tolman Ch 236

— 20 —
— 21 —

— 22 —

Misery consideration

one written - but not sealed - A contract in writing
not sealed & express contract one upon the same
feeling in point of solemnity (Pau 357 n. 23146 - Rob 99)
In strictness indeed solemnity or seal is no evidence of
a parol contract .

In the written instruments undertaken except
promises or agreements whether sealed or not mentioned as
specifications - Lemb - here therefore simple contracts are
always verbal , & the Eng - law relating to specifications
applies here to written contracts not sealed as well as
sealed if they contain an express provision or covenant
1 Law 378 - Edw qu . 2 Day 27

It is clear that an executory contract by parol
is not binding without consideration (Pau 320 231425
Lat 129 - Plowd 309-62 - Dy 30-336 - D 229. 5 R 143 -
144 - 326-332) It is modum partium - & ex modo
pecunia non contumax - & c. Promis to give one
£ 100 - & without reward -

But by Wilts not so a contract in
writing is good at £ 1 without writing consideration
(Binn 1670 312 - 1446) This proportion is too broad
1 Pau 333-42 - & 242

Care put by B.I. (241946) of a
humpay note - But as between the original
parties, actual consideration is necessary & at £ 1
must be proved 1 Pau 341 - Ch 51 7 M 257 n. Doug
574 - 7 M 121 - 3-421 - 37. Ryd 155 - 12 Gen - 335 - 41 Mod.
242 - Etia 674 Bull 274 Rob 7. C 99 -

¹⁶⁸
Receipt consideration.

i. After a negotiable note or negotiable promissory note is issued in general cover the want of consideration because a third person becomes the holder & the law merely requires 1 Pau 341 - 2 M. 71. 17 Inst 385 - Lays a fine on the third person -

But at C. L. merely reducing the contract to writing does not supersede the necessity of consideration - & I conceive that is strictness & in judgment of law as consideration is necessary to the validity of a ~~negotiable~~ sealed instrument or specialty - This is. Pff. need not prove consideration & 2. Dept. cannot call law over the want of it for from the solemnity of the instrument a consideration is implied (1 Ves 574 - 1 Pau 232 - Cloud 208 Burn 1637. 17 Inst 334 2 Bl 1445 - Head 200) & consideration being implied if Dft. might disprove it he might contradict his deed which cannot be 1 Pau 340 2 Bl 295 - Cloud 434 - 17 Inst 344 - 2 Reg 729. 1550 -

Suppose that the want of consideration appear upon the face of the specialty & it was so considered - Lays 2 M 577 - see Burn 2072 1639. 7 M 417. 3rd 2138 - 1 Pau 368 - 7. 60 40 - 2 Lle 152 -

Result that on principle a consideration is necessary to the validity of a specialty - but that it is binding unless the want of consideration appears in the instrument or in some other instrument of equal solemnity which is part of the contract Note. F. C. 95 - 1 Pau 341 that on voluntary warrants

The consideration of a promise written the 8. as well as
the promise must be in writing & East 10 3 Wthm 210 8ds
29 11ds 221 18ds 175. 10 Nend 250 / Northe hlt 81 17 Wthm 12
But a considerⁿ implied from the terms of the instrument is
effectuated on one expressly set forth - 10 L.L. 53. 272
yds 414 1 Pet. 501 6 Ld 531 7 ds 338. &c. ["] agree to
become surety for R. now you see? " the consideration
named in clauseⁿ was the continuance of the servt in
Off employ & between diff^t 10 Ld 335 20ds 272. 55
10 Nend 252

Necessary consideration.

189

and real only nominal damages are recoverable at law - This supposes the contract executory - But is the want of consideration supposed to appear in the instrument? What is the meaning? 38 W 222 - Nos 514 - 2 P 88 248 - Rul 660 - & 33 Ch 12 - 1 Lett 10 - D Ch 475 - as to relief on bonds voluntary bond in Equity Shewell

that a consideration is necessary to every contract applies in its full extent to executory contracts only - A contract executed by delivery of the subject is valid without consideration as between the parties as ~~sight~~ (1 Ba 238

(Aug 21 - Cap 577. Sec 955-) for the contract being executed by the parties the law will not reward it tho it would not enforce the agreement if executory

Robur

in Lts that the consideration is given in kind of land is conclusive evidence between the parties of the existence of the consideration - presumptive only as to the amount & receipt of it - 7 Lo 40 / Rul 479. 78

A consideration may arise it is said only in two ways - from something advantageous to the party promising or unmeriting - & from something disadvantageous to the party in whom fewer are - 1 Han 342 - 1 Ford 386 1 Com 149 - Rule too narrow - D Mansfield - Cap 290-4

I. From something advantageous to promisor &c. Ex. In consideration of my selling my house to J. S. today he

¹¹⁷⁰
Necessary consideration

Promises to pay him after - here the consideration is some-
thing disadvantageous to him.

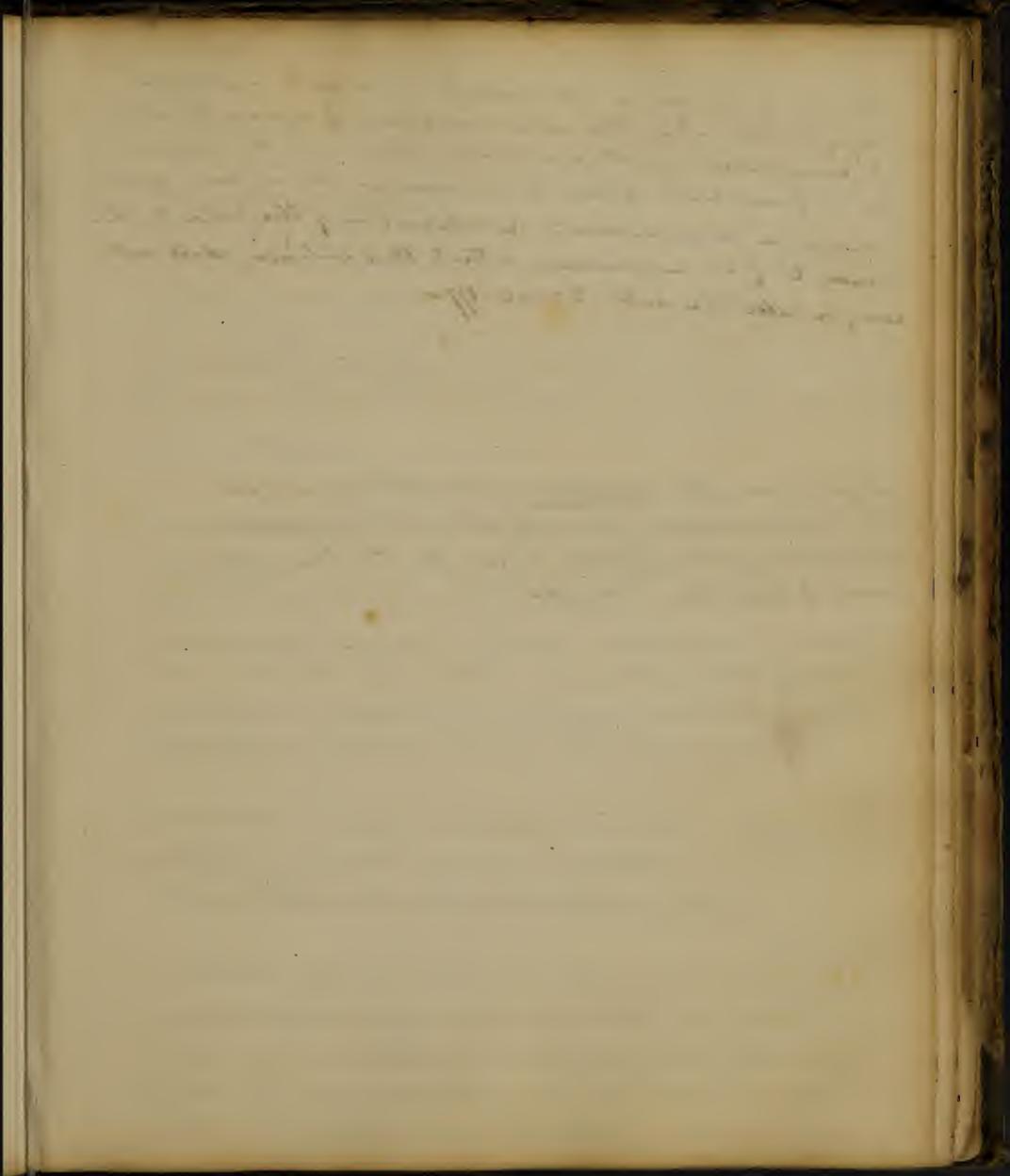
The quantity of consideration
is immaterial - the Consideration not in this instance
reected proportion - sufficient if there is any value
Ex - A receives 2 Ver 213 - 2 P 17 152 & Ver 280
2 Ver 513 -

Folle or insignificant considerations are not
considerations in law. Par 555 - Ex 24 - Not 28 -
Ex 2 - 206 -

But anything however trifling to be done by
him in whose favor the agreement is made is a
sufficient consideration - Ex A leases to B - B agrees
to C - rent becomes due & B promises to pay it to
with whom he is the lease - Showing the lease gives
A an interest on the promise. Par 375, 343 & 260
Ex 2 - 76 D 22

The mere relation of landlord & tenant
is a sufficient consideration for a promise by the latter
Ex Declaration stating that to be tenant etc that is
consideration thereof he, willing to carry away from
the farm structure - holden sufficient. 382 378

III From something disadvantageous to him in whose
favor he - having a bond executed & delivering
it up to be cancelled on his promise to pay the contents
Par 344.8 Not 4.5 - Ex 2342 Ex 274 349-881 Not 216
Not 22 249 p 125



In an action on a note given for wool left was allowed
to prove that when the note was given off agreed by joint
to indemnity against all damage the wool should sustain
in a given time & that such damage had been sustained
allowed as a recoupment or diminution of the note to the
amount of such damage & that this testimony did not
vary or alter the note 3 Hil 177-

I guarantee the collection of this note "is made for
want of consideration within 6 M. if it had been a
guarantee of the payment of the note it would have been
good. 3 Hil 584 5 do 146

Necessary consideration

185

As a consequence of the general rule as to the ~~second~~
two modes in which consideration may suffice it is
also a general rule that a contract is not supported
by consideration altogether past due - & by
consideration that one has failed my servant to
promise to pay - this is not binding - There is no
subsisting consideration no benefit or disadvantage
to either as consequence of the promise. *Paw 348*

D₄ 22 - 6 Lord's - 302 - Cr £ 885 - 442 - 120111. 2 Bills T -
73 E_d 87,95 -

But this part of the consideration is past
due yet if a party is subsisting the contract
may be good - Ex - Lefer in consideration that Lessee
had occupied & paid the rent promised to secure
the latter heavily in facture - this is good - for tho'
the occupation & rent paid were past yet the lessee
continued in possession & was to pay rent in future
Paw 349 - 2 Bills 73 - Cr £ 94 - Cr £ 409 - 3 80196

The
general rule is unchanged & the rule that a past consid-
eration will not support a contract is now somewhat
relaxed. *Stran 938 Burr. 1691 Hult 94 2 Leon 111*

Thus a
contract on consideration executed is good if there was a
previous legal duty or promise. Ex If one in consideration
of a previous indebtedness promises to pay it is good. here
however the duty continues - so when Doff^t promised in
consideration of having buried his child By us etc it is the elect.

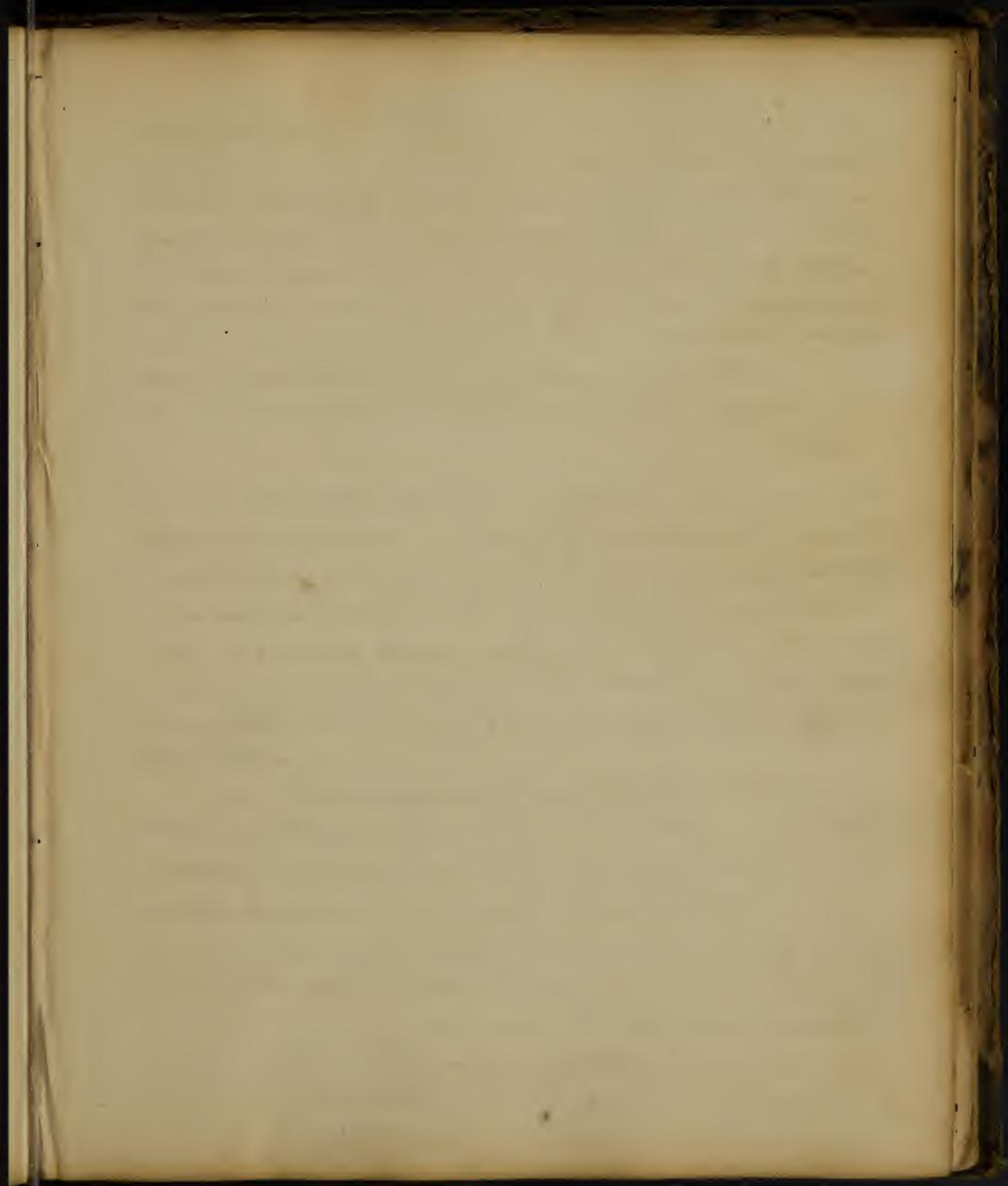
officers to buy their children 1 Pow 550 - 1801 1143 1 Leon 198
18 Aug 260 Cris - 158 Burn 1681

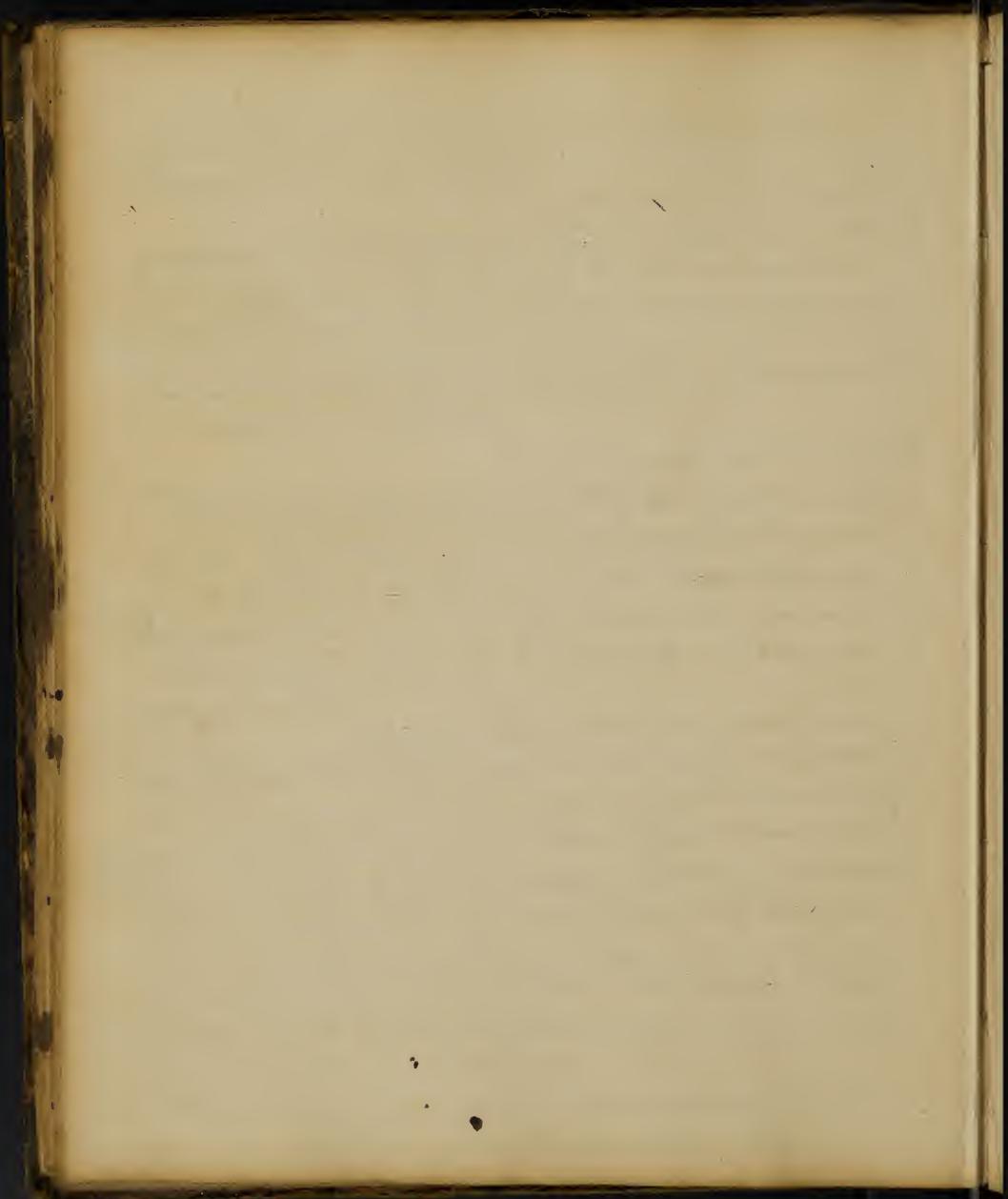
So if there was a promissory obligation on promises this is a sufficient consideration - Ex Promise to pay a just debt incurred by the testator 12 Oct 336 7 Aug 259 231445 1 Pow 551. Coupl 290 - Esp 95. Bull 177
So the promise of a putative father to pay for the best nursing of his natural child tho the law will not in such case raise an implied promise 2 Oct 506

So a consideration paid will support a contract if the consideration accrued at the request of promisor for the contract the subsequent couple it self with the previous request - Ex. Promise to pay in consideration that I shall act at my request located my servant 1 Pow 551 at Kent 268 2 Sec 96 - 13 Oct 120 172 - 1st Oct 105 - Cr 1109. Cr. I. 18. Cr 8,42. 282 Esp 95 - 12 Oct 556 -

It has been helden that a mere stranger to a meritorious act done by another cannot support an action founded on a contract in his own favor - for he does nothing concurrente to promisor or disadvantageous to himself He is a stranger to the consideration - So if a consideration that is will acquit him of his past promises & to pay £ 100 - £ it is said cannot rest upon the promisee - 1 Pow 343 - 353 - & N 330 - 2659. Cr. 220 Cr 2687. 2 Holl 441 - 597. 1 Vent 6 - sec 111 180. 101 8 110 117. Coupl 443 - Yele 24 - 3 9. 11. 35 - 5 180 - 260 - 186 1. Vinc 15 - Burn 2880 Bull 35 -

This rule seems made to be confined to cases under parties. 1 Pow 148 n 1 Sec 130. 6 Vent 7 -





no 729. Feb 23 1802 35.

But in the case of past agreements
it seems settled by the letter decisions that the third person
may maintain the action (530, 148, 1 Deion, 1 John, 140, 2 Evans
Poth. 132 - Sty. 290 Comb 219. & Mod 17) He is to be considered
as concluding or adopting & ratifying the contract by his subsequent
accept. In such case the promise should be laid as having
been made to the off & proof of a promise to another for his
benefit will support the conclusion - Lemb. 120, 101

It has

always been agreed that a consideration from one will
support a contract in favor of another who is nearly
related to him. Ex. Promise to a consideration that
he would perform a duty to pay to his daughter -
(Barw. 353 - Kent 218, 32 - 2 Lee 210 - Ray. 302 -) But it is
evident from the foregoing rules that no such relation
is necessary & that the promise is good in favor of a
stranger

when forbearance of a suit is the consideration
there are two requisites - 1. It must be either general, that is -
perpetual or for a certain period - 2. It must be of an action
in which plaintiff or person claimed to be liable is chargeable
or in which there is at least a colourable liability on his
part - Barw 353 - & C 208 Esp. 95

Therefore if a promise to
pay a debt in consideration that off. would abstain from
suing - no time being limited & forbearance not being
expressed to be perpetual - is not good - Barw 353 - & E 19, 455 -

But promise to forebear a year or a reasonable time
is a good consideration - court to judge what is
a reasonable time. Esp 95 - Henn 108 -

2. Promisely
another to pay a debt due from her son who was
dead if off - would forebear to sue her is not obligatory.
- There is no consideration - she was not liable - forbe-
arance is however to her - no disadvantage to
promisee (Paw 354 - Head 273 - 2 Sat 96) & there is
no moral obligation on her to pay -

So if one is arrested
on void paper & another in consideration of his
release promise to pay, he is not bound. There is no
consideration - (Paw 353 - Esp 94 Head 28) the release
is only from false imprisonment

So promise by A to
pay B's debt if creditor will acquit of bearing his payment
& will forebear to sue C for it for six months is not
good for B to right sue B immediately - therefore
no prejudice to the creditor, Paw 346 Head 52 -

But a
promise in consideration of forbearing a suit is good if there
is a colourable ground for the suit - 2. by A not having
bought silk & velvet died - his executrix in consideration
of forbearance promised to pay - this is good at L & L for
here was color for a suit the being execution. Paw 356
Lathe 142 Dg 222 -

When a promise is in consideration

1175

1791

near the original
skew

These experiments had a decided effect on the mind
of the author and it was natural in him
to make a collection of such subjects as he could
find in his library. This is the result of
that collection of subjects which is now called the
Dodd's Library and is now in the hands of

1174

But promissory
is argued

Purchaser of person's property in good account set up want
of title in his vendor until a legal eviction or recovery
against him by the lawful owner of Johns 77 10 Wend 385
but such recovery is a good defense to an action for the
consideration or if it has been paid to recover it back
10 Wend 385

for lassance of a suit against the purveyor the original cause of action is not to be examined into - it is acknowledged by the Province 18 Nov 357. But the rule cannot hold & trust if it should appear in the declaration that the suit for lassance was grounded 18 Nov 356

Contracts viewed
with reference to their consideration may be divided
into three kinds, Doug 665-

1^o Where that which is stipulated on one side is in consideration of performance what is stipulated on the other - Here the consideration are termed mutual - Ex 1 agree to pay 2d for doing a certain act & here the doing the act is a consideration precedent to his right to the payment - 18 Nov 357. Wint 145. 214 - 2 Dec 357. Nob 106 - 18 A.D. 240. n - 2 Mod 460 - 12 Oct 6. 380 - 1^o 18. 131. 274 - Aug 2 Co 10 -

If he sue for
the price he must prove performance of 210 - or what is
equivalent to it or tender or that he was prevented by
Doftr (142 - 638 - 2^o Ray 686 - Doug 259. Star 1226 - 5 Com 50
1 Nov 455) or as the case may be, that he was at
the place ready to perform & Doftr obtrud'd that he was
then prevented from performing, 18 Oct 2035 - 5 19 - 2 M 125
Star 488 - 2 Nov 250.

2^o Where performance on both sides is to be concurrent - here neither can compel the
other to perform till he has performed his part or
offered or is at the place appointed & the other is absent

or is ready to demand performance & the other
refuses - E. A. D. promises to deliver 2 - or load wheat
on such a day for such a price - 2 89 240 - 1 £ cound 32
5 Corn - 87 - 1 East - 208 - 619 29 - 7 M 125 - Sat 171 - 12
Daug 659 - 88 - 4 M 761 - 1 2131 3 63 - 8 93 262 Stra. 525 -

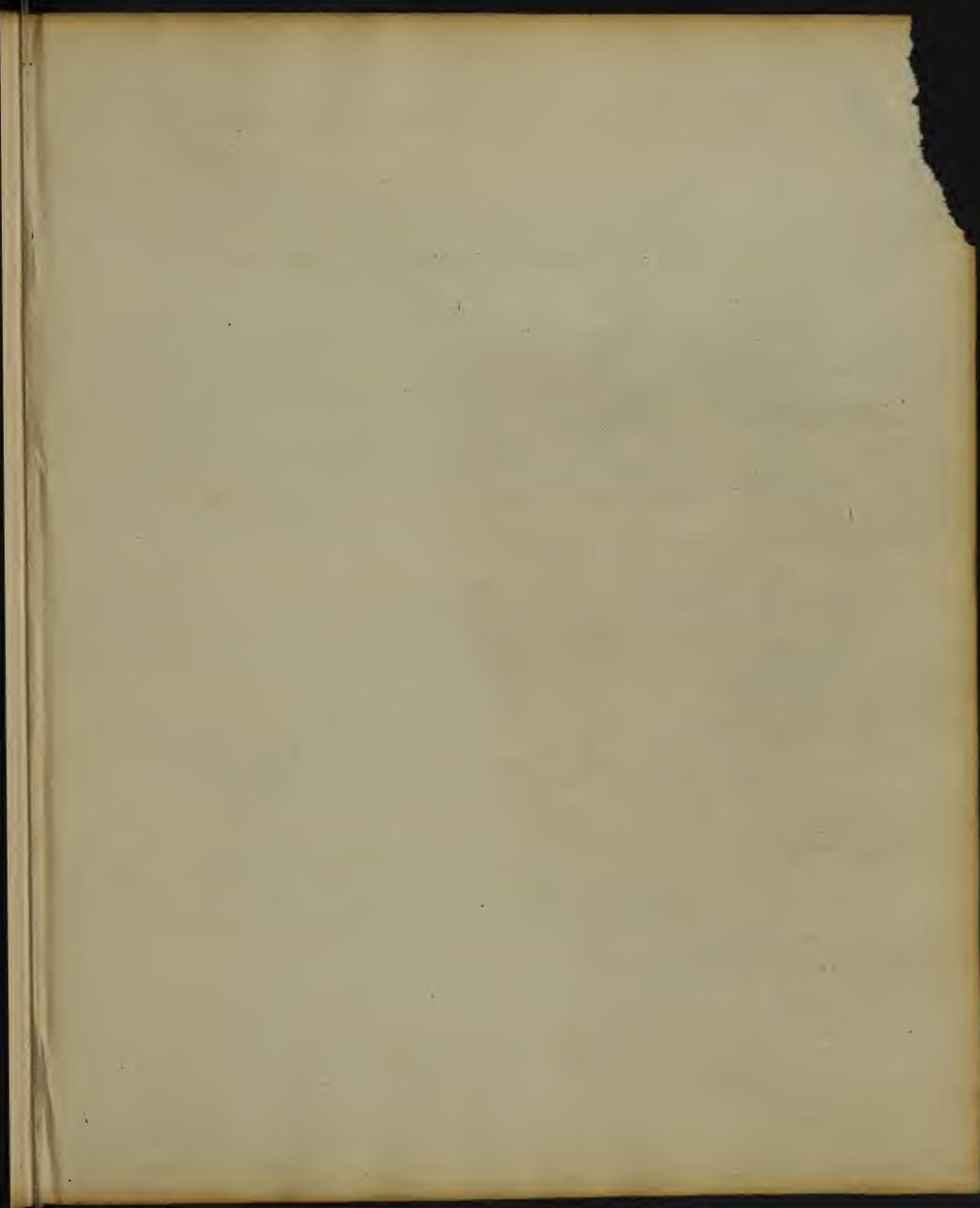
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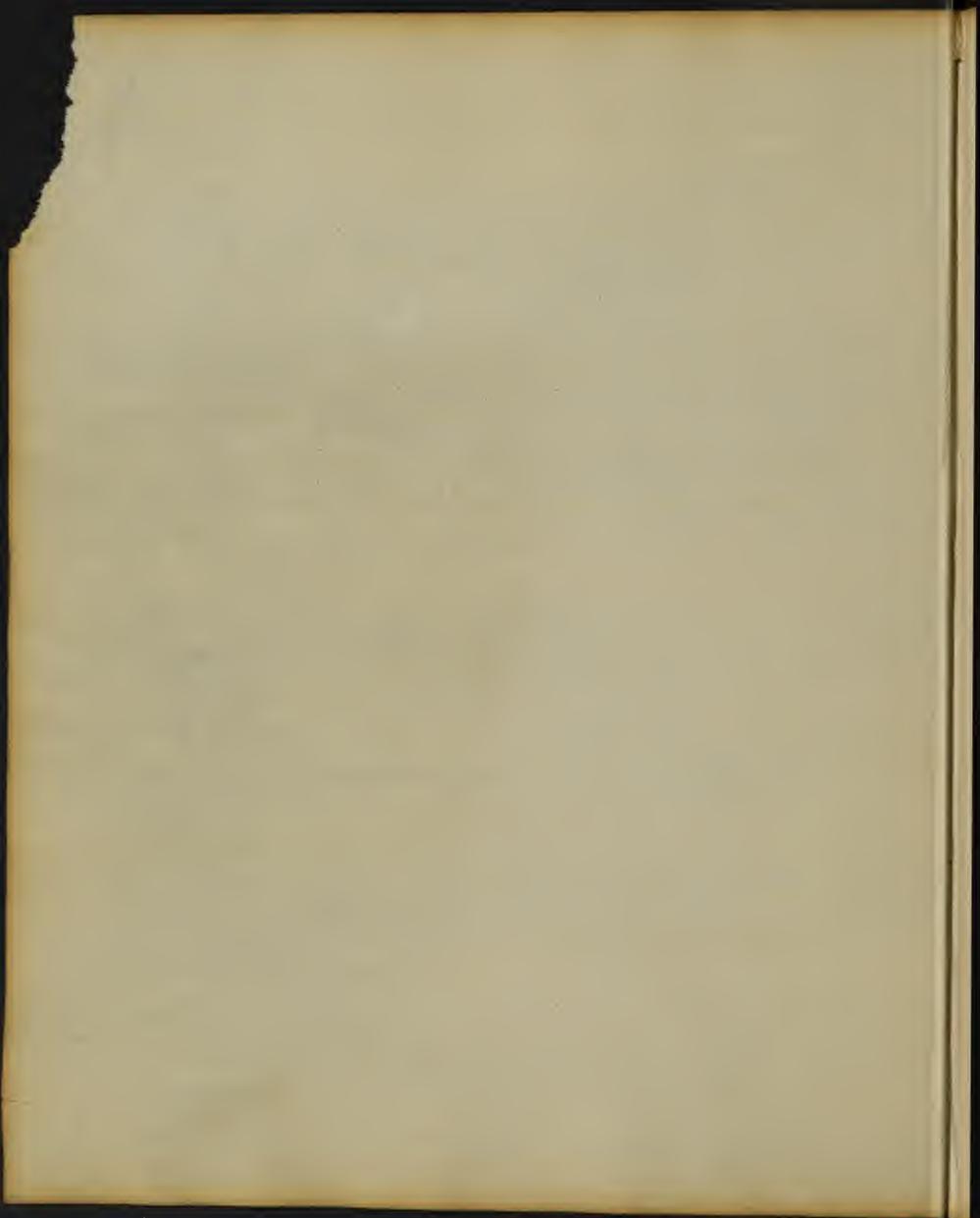
There is appointed for performance It is sufficient that S.Y.
was there & defendant admits no tender is necessary 1 East
208 - 7 M - 125 - Then 453 - R. L 108 - 128.83 Sat 113 - Daug 683 -
4 M 761 - If in this case D. A. was to perform on request
It is sufficient that S.Y. was ready & requested & D. A.
refused 1 East 208

If the agreement is that one shall do an
act for the doing of which the other shall pay the doing is
a condition precedent retrosp.

But if according to the terms
of the contract the money is to be paid on a day which is to
arrive or may arrive before the act can be performed
the doing of the act is not a condition precedent (cound. 320
2 N.E. 240 - 1) There action lies for the money before the act
is done - 1. Cound 320 - 1 Month - 281 - 8 Mod 52 - 5 Vines - 10 262 -
1 Pau 368 - 1 Oct 131 - 7 Co 150 - 18 East - 147 - 2 2131 389 - 6 M 512
- 9 135 - Hence it is clear the payment is a condition precedent
Loyd where a day is fixed for payment & no time for
performance on the other side is 1. Cound 320 - 2 N.E. 288 -

But if the
day appointed for payment is to arrive after the time





fit for doing the act performed & the act is a condition precedent & must be a cause in action for the money -

Pau 358 - Lel 171 - 395 Doug 676 - 1 Mol 114 - 1 Decoud 320 - 2 83. 246
12 M. 462 - 2 Roy 665 -

3. But where the promises are mutual (or independent¹) that is - where the promise on each side is the consideration of that on the other performance or non-performance precedent on either side - either may sue without a writing performance Pau 229 - Doug 610
West 111 - 214 - Plot 83 - 1 Lev. 293 - 3 Bells 187 - H. 102
Lel 24 - 8 M. 462 411 - Lems in Equity - where the party must own performance or readiness to perform tho' the written agreement otherwise Equity will not interfere (2 April - 283 - 2 B. 66 184 - Finch 446 - 2 Green 23) its interpretation being discretionary

If the agreement is in these terms "I promise to pay \$100 in 2 months upon transferring stock to me" the promises are not mutual & neither considers her performance till she has performed - so e. concernant Lel 112 - Plot 653 - 1 Tone 382
12 M. 503 - 1 7031 - 270 - 4 M. 761 - que as to the care in
31 2 1312 - 8 M. 372 -

Where the covenant is given to only part of the consideration on both sides & at least if it may be satisfied in damages it is independent 1 Decoud 320 quo - will action lie unless off her informed in part? 1 Decoud 320 - 6 M. 570 - 1 413. 273 - 2 83. 246 - 1 820 - 573 -

The question whether promises are mutual or dependent
is to be determined by the meaning & intent of the parties
to be ascertained from the spirit of the agreement & the nature
of the contract - that is - from the order in which the intent
requires their performance - (Aug 665 - 17 N. 665 - D^r 100 - S^r 57 A. 668
F^r 288. Sat 91. Second 927. 2 87 N 240.)

Where the promises
are mutual that is independent it is no bar to an action
that the off^r has not performed his part - Each may have
an action against the other at the same time (Aug 66 -
R 12 - 1312. 7 Fort - 282 - 3 Lee 41 - D^r 16 Boug 56 -

See Ex-Courts

same learned of Coke arguing concerning covenants to be
independent 24 N. 761 - 8^r 2^r - Aug 486 & 1 East 319.

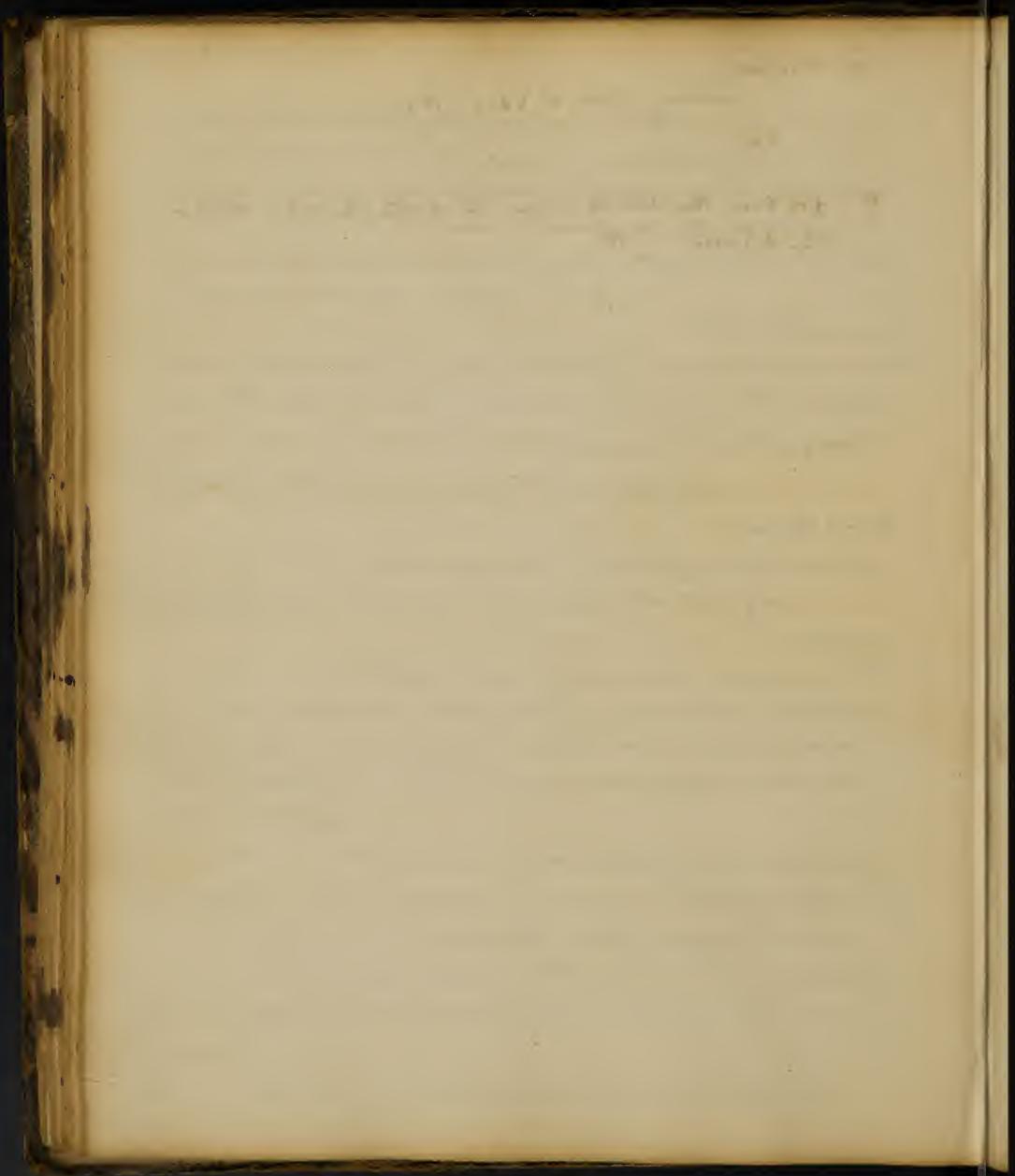
Mutual
promises must be made, binding on neither until so far that
in the contract make & such a value & in such terms
as will bind on both sides & both must be executed at
the same time or both are mutually rejected (Aug - 360
Bou 24 - 7 Fort 282 -

The mere act of alienating property with
another on his undertaking to do something respecting
it is a sufficient consideration - D^r 29 299-10 - Ex D. 662.
5 N. 1143 - Nov 26 364 - Coke 183 - Sat 26. 8^r 11 - Ex Delivery
& money to be delivered over to another without a
reward

The interpretation of the term & place of an

John H. Nufield
Salisbury, 1849. 4 X 4. At U.C.
X4.

C. Col. Com. Ayn. Chi Psi. Sigma Phi. Delta Phi. Kap. Alpha.
Psi Upsilon. A.O.



1179.

family has been taken as sufficient consideration in
Chambers (1 Pan 263) so the same reasoning & a sound legal
right has been held sufficient in Chambers 1 Litt 10
1 Nov 4-28 Oct 353- 2 Ves 284- in ante

Not necessary in contracts
that the consideration be expressed in direct terms
Sufficient if one can be collected out of the whole agreement
1 Pan 288- 2 Ves 450 In Agreement for settling boundaries

But if an express con-
sideration appears upon the face of the contract the
letter opinion is that no other can be implied - Ex parte
Sect de la Loi 40 1 Pan 388-

But it is said fraud in the con-
sideration of a contract especially a contract by deed,
does not in general vitiate it - the fraud in the execution
does (2 B 204- 2 Bar 594- 2 Co 29- 2 Litt 42) - a point
wanted in the second case & not in the first - But Equity
will relieve against intent to be foisted in the consideration
1 Pan 145- 2 P W 203- 2 209

At Law the party defrauded
must resort to his specific action for the fraud - But
this rule is much relaxed by late decisions (Lancs.
29-10-9-4- 8 Robins- 453) Does it now hold at all in
case of simple contracts?

But our courts have held
that a total fraud in the consideration of a note -
that is - when know or has received it to receive
nothing in agreed sum at law 1 Inst 33- 305- & therefore

that in such case relief cannot be had in Equity - Deems where the fraud is partial - here the relief is to be had in Equity per Courts of Law must give judgment for the whole amount of or for the debt - cannot attachment - No the fraud is total yet if the obligation is not in part or if all the obligations are not in suit relief may be had in Equity - Deems provision must remain in force until till provision would bring a suit at law.

Interpretation of Contracts

The object in construing contracts is to ascertain the intent of the parties 18 An 37 & the contract however simple cannot be carried beyond that intention 18 An 37 Thus if a tenant takes up his lease for 10 years \$10 per acre & says he will let it for it because there is no grant of an annuity or rent (18 An 37 Col 146) the it is agreed rent charge for which he may withdraw - for the reason it changes with the district 18 An 37 Col 146 2 Rob 425.

Contracts are to be construed to the full extent intended if the words can be so written as to effect it - & if created to raise money out of a master it carries in Equity a right to sell if the slave cannot be raised within the time in any other manner - 18 An 37 Col 146

The intent when affeint & not refusing to any rule or
law will entit^t tenement terms 1/3 Ldms 395. / bards of
conveyance in present^t with ex^t to prove a good
and^t lease - Said to be an account for a lease - Subp
id 3 Ldms 148. 424 1/3 Rd 735 £2 ad 759 - A cont^t to
let^t B to B on certain terms for by years from 1st Apr 1807
to 1st Apr 1813 in consideration that B should pay \$250-
on the 1st Apr in each & every year during the term
held a sufficient demise 5 Ldms 761 - A agreed to let to C
a B. to have of a certain premises for by years at a certain rent
of B. in consid^r of a lease to be granted by C for the term
agreed to be a certain and within 14 years of £1. agreed to give
the lease as soon as the act was done with this clause in
the agreement "this agreement to be considered binding till one
fully performed could be proven" - Let a lease in present^t
12 Oct 168. £6 2 bush 286 - Mere of an account that it
be set to prove a let to B. all the place to be ready
when B was to take a lease of the same. Let to C
alone in present^t 10 Ldms 393 but in this case there had

been a son of 14 years with the agreement of his parents of Lent
"conditions for letting the 15th acre after mentioned setting forth
the same -" or a note to be made on these conditions with all
the usual costs" at the cost "I agree to take lot No. 1 at the
republic subject to the above" this will be an agreement for a
lease 13 feet 18 rods 3 bounds 65 15 East 21 1/4 3
John 296 m

114/11

words are to be understood according to their most common
ordinary constructions unless there are decisive
reasons to the contrary - 10 Parl 5th - Placed 169. 16h 2 p^m
L. & C. 286. Corp 53 - 21 N 218. - Being ~~to~~ agreed for
2 barrels of ale he is not to have the barrels after the
ale is spent - Lewis of an agreement for a hogshead
of wine - vendor has the hogshead ~~for~~ - such is the
understanding of the parties - such is the usage -
10 Parl 3rd 4 Plaunds 86 -

So a lease for 12 months is for ~~one~~
48 weeks only - not a lease for a twelve month & for
an entire year - So understand the parties 10 Parl
3rd - 231 41 - & 60 81 -

Words expressing place of quantity are
sometimes understood at the place where spoken
or used - Ex Sounds or Markets See 10 Parl 3rd 6 - L. & C. 172
Law 2nd to be delivered at another place

But if money
is made payable by contract its denominations are
to be understood according to their import where
it is payable - Ex Contract in London to buy £100
in Dublin - the sum to be paid is £100 and more
10 Parl 4th 233 88 - 690 -

If the language is ambiguous
the intention may be inferred from the subject, effect &
circumstances 10 Parl 8th 6

Subject Ex - Covenant for quiet enjoyment extends

not to tortious entries (1 Banc 1108 - 379, 88 - 1 Inst 1125, &c. & 212
Star 1400 - 4 N. 619 - Note 34 - 2 L. 285, 301 - 37 R. 830 - ~~4 Inst~~
480, 80 & 83, 91) for the interest is inferable from
this subject is merely to guarantee against a higher
title.

Grant of common out of my manor all of my
manor-grantee has won now only in commonable
places - not in grantor's garden - & grant of all the
trees growing on my farm does not include fruit
trees growing in any garden or orchard if there
are other trees growing on the land 1 Banc. 377, 8

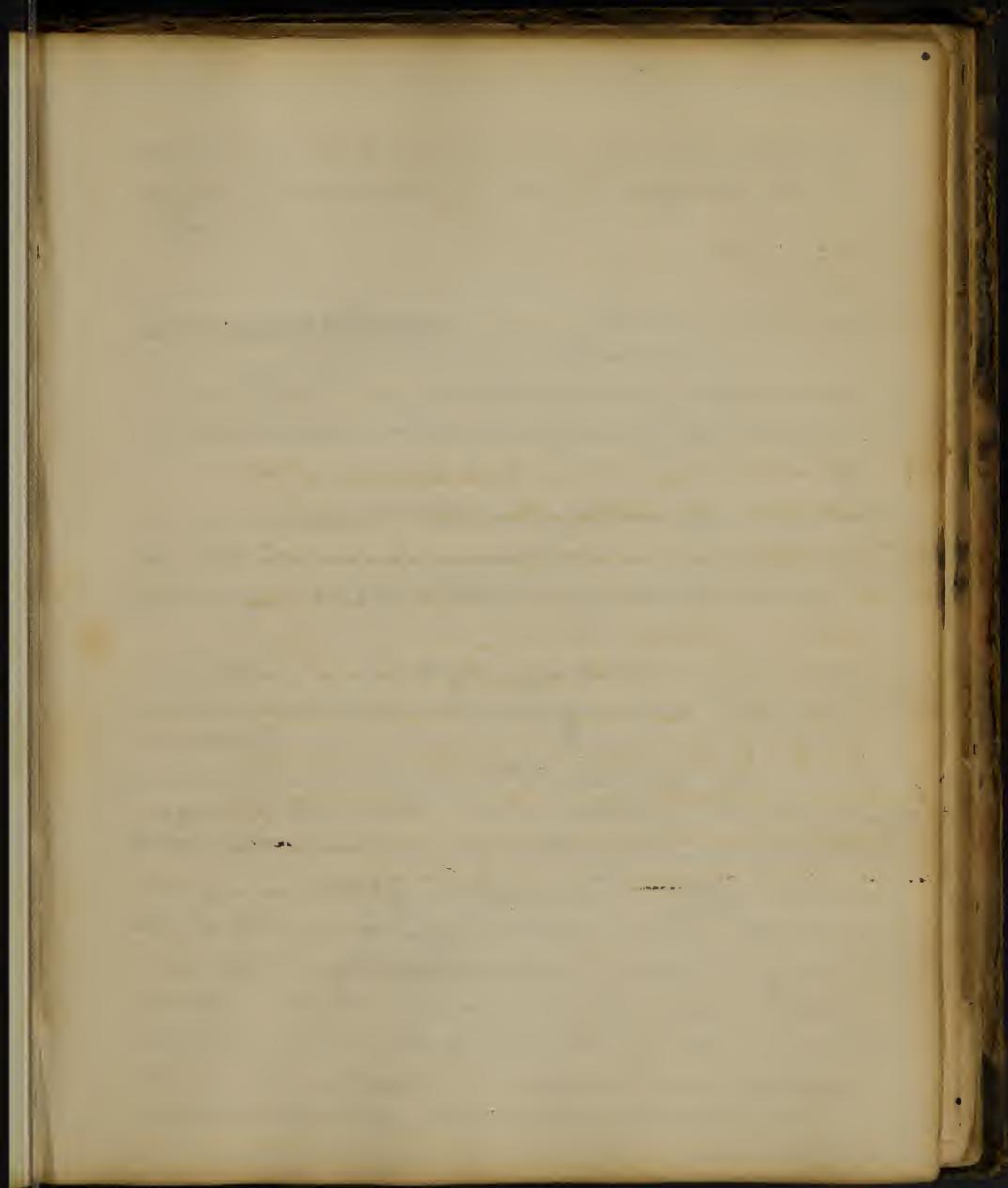
Actions

necessity entries may defeat his conveyance but may
have effect as if it were in form & substance an instrument
of a different species Ex - Settlement or grant by one
joint tenant to his wife another joint tenant or a slave -
or covenant made to sue a debtor in an adjacent town
Aug 1872 settled 150 - 2 Lancd 84 - Ex 8352 - Lev 376, 3 -
298 - 142 1446

Effect when of existing or contract according to
the ordinary meaning of the words will render
it ineffectual or trivial a different sense may be cast
upon them - Ex - Where words of limitation are used in
limitations of estates - 1 Banc 382 - 2 L. 218 - 2 37185
Went 202 - & 2 205

Let an annuity be granted for
instituting one's son, or for other service to be done

Suotis, we bound only according to the strict letter of their
contract 10 Jany 180 20 R 370 2 Saut. 206 & March 576 Ex.
My^d guaranteed an amount of goods to be furnished at
12 mos credit & was not called on to pay until after
the expiration of the time but incurred no credit as
agreed to be given at the sale of the goods dep't not
liable - th^d have been sold on a 12 mos credit 2
lom L.R 352 so "I will be answerable to the extent of \$100.
for the use of it" & this guarantee was applied to satisfy
a former indebtedness of th^d - guarantee not liable for his
undertaking in further amounts, 10 lom L.R 197



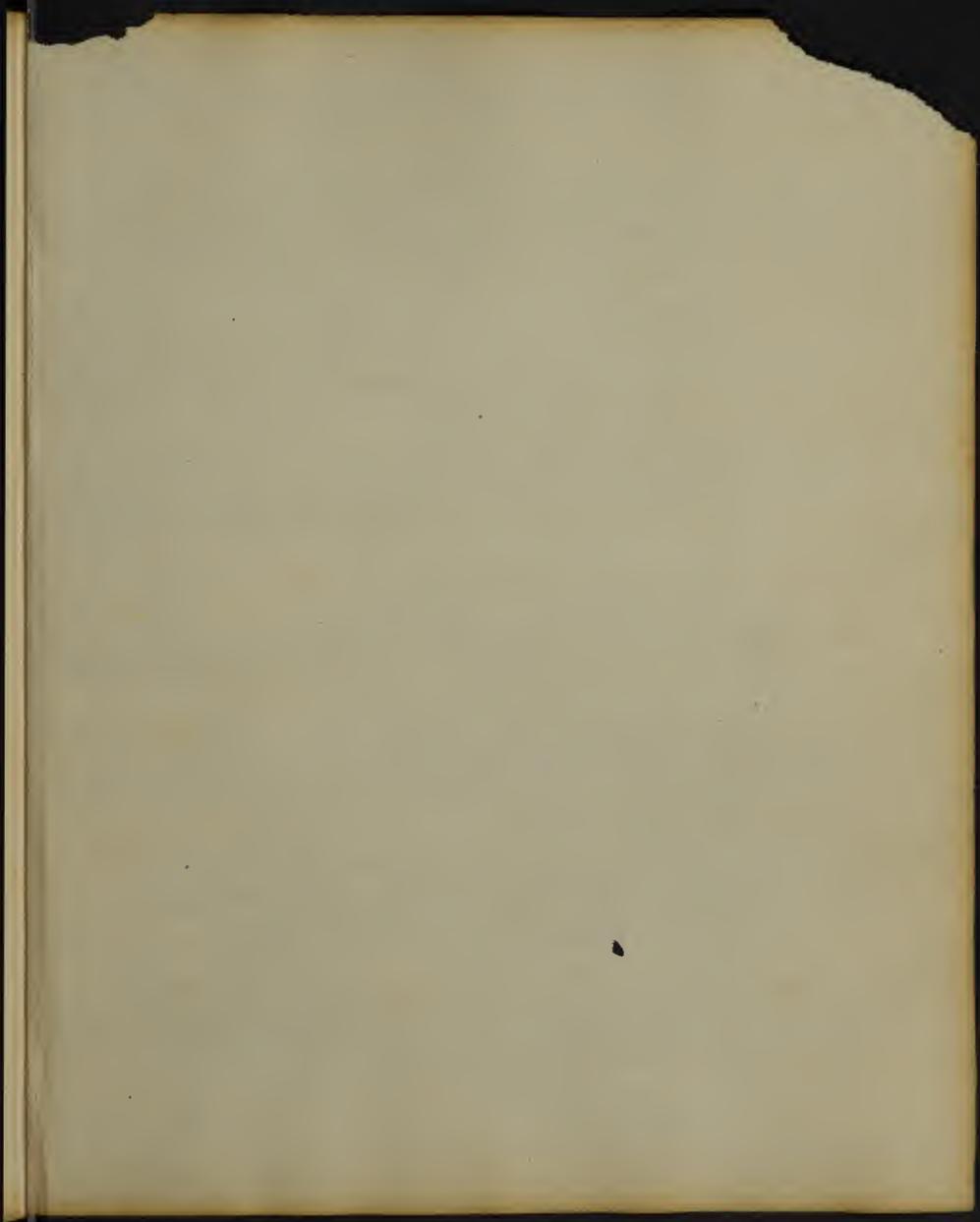
But it is after the application of these rules, the intention remains dubious. The contract is generally to be construed most strongly against the party bound - Ex Granaderus the words are his - he himself having explained himself - 1 Pow 395a & 607b Plowd 140-667-389
Cec L197a 26th

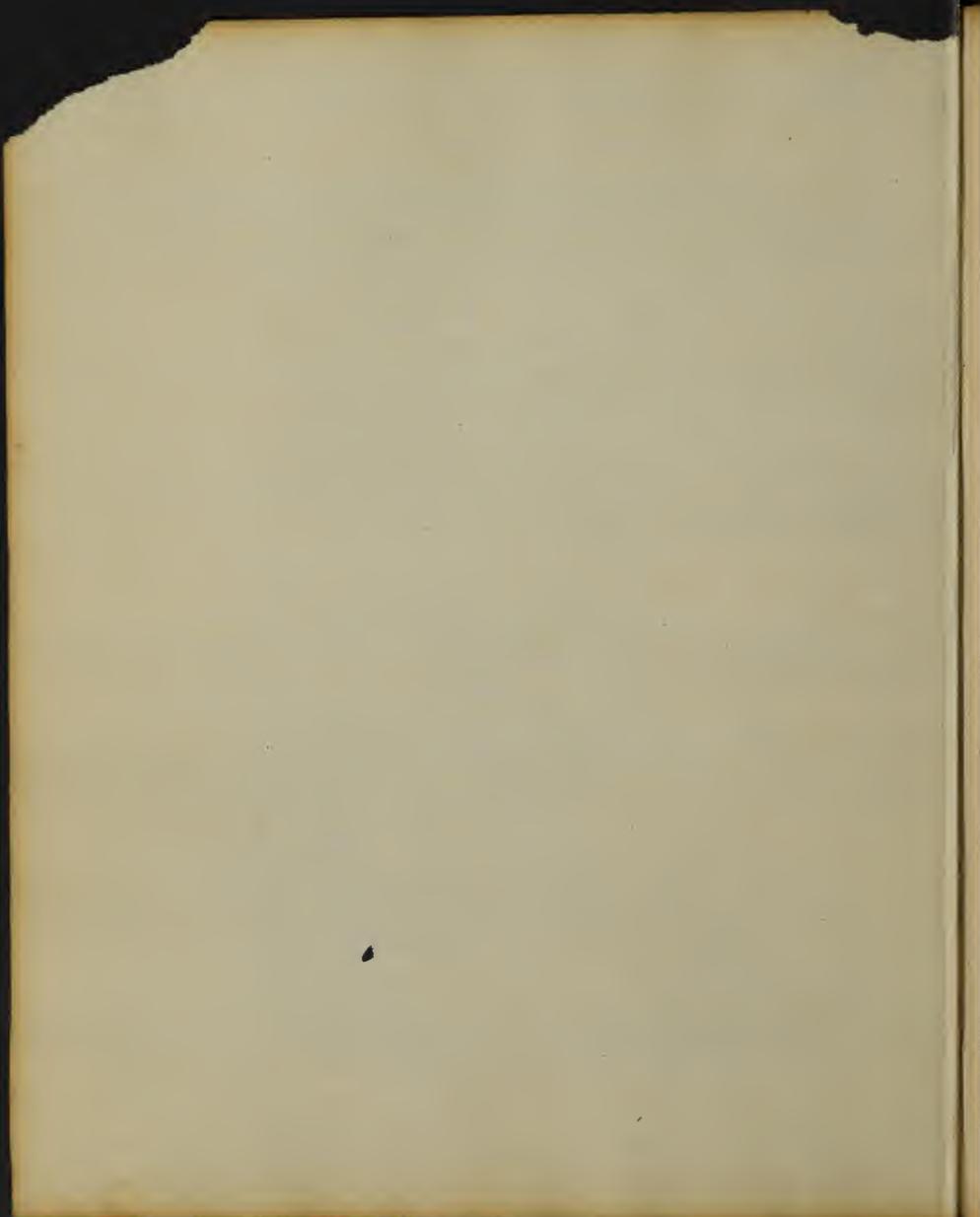
Exception where there is an ambiguity in the condition of a penal bond - construction in favor of obligor - for the condition is intended for his benefit & is to discharge him from a penalty which is not incurred 1 Pow 897a D 47-560 22

Here if one is bound in a penal bond directed to pay money at such a feast & there are two feasts in a year of that name the money is payable at the last - 1 Pow 897a D 47-17a Lewis of a covenant & concluded

Let it be helden if one is bound in a penal bond to make a sufficient & lawful estate in lands by the advice of 2-3 & he makes an estate according to his advice whether sufficient & lawful or not the bond is void 1 Pow 899a & 502-23 n Plowd 75 in gen - Would not Equity decree a sufficient appearance? 1 Pow 899a 1 Eq 1a 18n

Exception also where the application of the general rule will occasion an injury to a third person - as if tenant in tail make a lease for life not specifying for whose life - the life of the lessor shall be intended - Lewis the issue or reversioner





might be injured Saw 400 Co 2 42 - This is made by
tenant in fee the leasehold to be for lessor's life Saw 400
Co 2 42

Ledgers to these rules the words are to be understood
in the most comprehensive sense in which they are
understood. Ex Covenant of warranty against the
claiming & "all men" is a warranty against the claimants
of all persons Saw 400

An indefinite expression is
considered an universal one in relation to the subjects to
which it extends unless there is some manifest reason for
restricting it. Ex Tenant in fee makes a will or sells of
all their goods - it includes as well their several goods
as those held in jointure. So if one party that he
owns divers horses makes a will or sells of them all
his horses (page 1 Saw 400-1)

The legal language
is used it is regularly to be understood according
to its legal acceptation - Ex. Limitation to one heir
so long as he pays rent can annex
and extends to all his heirs successively
1 Saw 402 - 2 Roll 1 253 -

2nd - Is not the word heir
in this case manifestly used as a word of description;
So on covenant to satisfy
after request & due proof all other & clement by covenanted
apprentice - Judicial proof is intended - being made
in an action against apprentice 1 Saw 405 - 2 Roll 217

Contracts are to be construed according to the general intent appearing on the face whole contract tho' opposed to particular words in the instrument or agreement -

Parw 403-Ex. Convenient by lesor that he be informed of former grant by which the lease may be defeated but lessee may enjoy without hindrance from him or any other person. Disturbance by any other person than grantee of lesor is no breach. Parw 403

○ D^y 24th M^o 58^a C^o 2 43-615

If the thing stipulated for is not delivered or done as the contract requires its value at the time fixed for performance is in general the rule of damages. Parw 408 D^y 81-1 Ver 27^a 18^a Ca 22^a Ita 406 Bur 1010

Except when the thing has afterwards risen in value then the value at the time of trial is the rule - otherwise the party claiming would suffer from the others neglect. Parw 409 2 East 211 2 Ver 394

If several deeds be made at the same time between the same parties respecting the same subject they are all considered as parts of the same contract to be taken together for the purpose of construction. Parw 410 2 Bur 518

the first time I have seen it. It is a very
large tree, with a trunk about 30 inches in
diameter, and a height of 100 feet. It has
a very large canopy of leaves, and the
branches are very thick and strong.
The bark is smooth and grey, and
the trunk is straight and upright.
The tree is located in a clearing in the
forest, and it is the largest tree in the
area. It is a very impressive sight.

Genl rule the entire contract cannot be apportioned
Sat. 65 Comp 666 2 Ban 1033 1 Bl. 284 Doug 585 781 1 Ban
172 7 Bl. 207 381 6 do 320 6 Bl. 1211 5 East 316 10 do 5 Bl. 295
15 do 440 14 Ban 105 3 Ban 1237 2 Bl. 61 In lease for one year
d interest of lessee in the premises determined before the expiration
of the year 10 do 127.

But in the case of Real contracts where there
happens a division of the subject matter of the contract there may
be an apportionment of the contract 60 E 581 2 East 575. Ex
lease of B & W. due for one year & interest of lessee in Ban
terminate before the expiration of the year - the rent may be
apportioned 2 Inst. 504 10 do 127 60 do 150 2 Inst. 576.

But rent can
never be apportioned in respect of lease 2 Bl. 502 2 Nov. 204.

In genl if a corporation procure an alteration of its
charter by which a new & diff't business is superadded
the stockholders who did not consent to the alteration
will be absolved from liability, on their subscriptions
to the capital stock especially if such alteration be
clearly prejudicial to their interests 5 Will 383
4 Johns Ch 573 Coll on P. 141 8 Mass 268 2 Mass. R. 184
464 2 Watt 257 156

Of covenants discharging and writing contracts

Till the terms of a contemplated contract are accepted on both sides the contract is not unsummarized & either party may retreat his offer Paw 894 - 3 52 - 652 - Paw 261

But an offer on one side accepted by the other becomes a contract so that either by tendering performance according to the terms of the agreement may bind the other & if he offers \$20 for a horse & says he will take it & by tendering the money may close the contract 281447 - Vol 41 - 28a 241
Paw 631

Lo if on such an offer accepted earnest is paid or if a future time is fixed for the performance the contract is complete & the property bound 281447 - 8
Nov 42 - 1 Paw 330 14131 363 - 7 26 64 -

But if on the offer being made & accepted nothing more is done - that is - if there is no payment delivery - earnest or future time appointed & the parties separate there is no contract Paw 231 281447. 6 Paw 302 Dg 30. 330 14131 363 - 2 316 - 2 Recens 373 -

Lo if A agree to sell goods to B if B within a certain time shall have to pay them to B within the time gives notice to A that

he will take them according to the agreement - he is not bound for there was no written - the agreement must bind both for neither L & D agree there is no new contract 3 1/2 - 653 - (Paw 261) con

before a right
of action has accrued on a simple contract the party
may rescind it by mutually agreeing thereto
- further if there is no unexecuted right destroyed by it -
mutual assent is withdrawn before either can make
a claim against the other Paw 412 422 - 265 - Ex 6
209 - Law N.P. & Q. 126 - 2 Lee 164 - Wats L.C. 234
Mod 257 - P. 608

After a breach it cannot be discharged -
agreed by agreement without a release by deed unless
there is a new agreement substituted & executed
- that is an accord & satisfaction (Paw 412 - 13-16
Mod 538 Law N.P. & Q. 126 - Ex 6 284 2 Mod 144, 259
Wats 234 - 1 Mod 257.) Then there is a right compromised
& the question of assent is at an end - Deeds as
to acceptance of a bill of exchange - a creditor may
be discharged by parol after the bill is payable -
Ex 33 - Dano 295 - 41 Esp 41 - This seems to be a positive
rule of the law merchant

But an agreement may
be received in equity by a long omission on both
sides to execute or claim under it & an agreement
by lord & tenant to enclose a part of the common

Where a written contract is to be valid if made
by parties the time of performance may be
evidenced by parol but this cannot be done where
the contract is for conveyance of land or is of such
a nature that it would not be valid if
made by parol of Nov. 68 5 L. 506

2d R. 138 1 L. 326 L. 390 2d R. 383 R. 3d R. 138
Kas 356

Where a thing has in lying a dead is evidence that it has
been altered for the estate having passed it cannot be
evidenced by altering or destroying the dead 14 L. L. 162
Palm. 403 But 14 2 K. L. 586 2 L. 220 2 Shw. 28

CCR. - Asses where the thing claimed has in grant
as a water course for a thing lying in dethorn agreed
can be claimed only by solemn agreement 11 L. L. 162 v. 8 Bulst.
79 R. 11 R. 188

Wendes paid Nendor for not delivering wheat according
to contract & recovered the full value of the wheat. Nendor
then sued recover to recover the price agreed to & paid
for the wheat held that he could not recover that he
ought in the first action to have insisted that he was
only liable for the difference between the contract
price & the value of the article which was the true
value of damages in that said nothing having been
paid by vendor - of Wend 131 & recover 681

Where 3 notes were given for article, warrantee in
suit on the third note because of want of payment may
be shown either in law or mitigation 10 Wend 512

delayed for 20 years - there is a presumed abandonment
 Pow 413-20 281 116 2 Ch Cas 207-2 9 M&W 2-3

So where
 there was an agreement between interested husband
 & wife that she should have her property to her
 property to her separate use & she permitted the
 husband during the whole marriage to take the
 accrue to himself she was presumed to have
 abandoned the agreement, Pow 241-441 2 P&R. 82. 32
 2 Ch Cas 21 281 116-2 Ch 22-117-

But this presumption may be rebutted by proof that
 she was dispossessed during marriage or that
 the husband took the accrue under an agreement
 to fulfil the agreement, Pow 421-16 269

~~Ana contract consummated~~
 & entered into by one or the parties only
 when there is a provision to that effect in the original
 contract itself. E.g. lessor or hirer to a lessee an agreement
 that it may in a certain event return him on the events
 happening or may reserve & recover the price paid as
 money not received (1 Pow 415-17 185-201- Law 818
 Aug 25- 2 East 145- 182 351 2 Ep R 82-) This is a
 deposable contract

But according to Pow 416 if a contract
 will be for property of such a nature as to itself make
 the parties cannot fulfil it because they have
 enfranchised a third person to benefit & it is

See May. 91 - In what right has S.C.?

But a contract
may be released either as well as before action accrued
- to release my lessor or tenant - the former is
by a regular acquittance by deed - the latter discharging
or cancelling the instrument. *Same 416*

If he who is to
be benefited by the performance of a contract prevents it
from being executed it is implied. *1 Same 416. 20-265*
2 Co 91 - Co L 206 - Cr L 274 - or rather the other
party is discharged & in such case the party who
was ready to perform is in the same condition as
if he had actually performed - & covenants to
build a house for 18 for £100 - 1% premium being given from
building & may recover the £100. *Same 419. Co L 210-*
post 1219.

- It may be a sufficient to have a condition that it shall be
void on deceasing him to 3 or even ten days & on the
decease of his & his wife & the realm so that it cannot touch him &
may ascertain as if the money had been paid. *Same 420*
Co L 210 - 2 in will not Equity consider him trustee of the
money for his wife.

A contract may be annulled by a new contract
of a higher nature for the same thing - as an English
simple contract merged in a bond - to an judgment -
(Same 219-423 - 6 Co 45 Qd - 21. 353a - 124 Cr L 154 - Rule 155
1 King's - 2 East 257) for the intention of the parties is
not to furnish a true & full remedy but to furnish one

A demand to be a home for a year sent payment quarterly
during the current quarter B. with A. consent quit the premises
without any stipulation of the rent for that quarter. Held that
as these facts w^o show a revision of the original contract
it could never neither the rent that would have accrued
at the end of the quarter nor a pre-estate sent 15th Oct 1862
239 5 Tenant 518 Whitehead v Clifford 7 H.R. 381

A material alteration by a stranger does not invalidate an instrument
nor an immaterial one by a party dealing under it 106d 192 -

1678.82

Where a note given for an antecedent debt or money,
leaves it by amount of pecuniary so altered as to render
it ineffectual it does not preclude a recovery, for the
original amount - 14 C. L. 66 3 Stat 390

If a claimant sue the acceptor on a bill & fails by reason of
having altered it in a material part he may still recover on
counts on the original consideration 29 C. L. 169 -

on a suit on an instrument that appears to have been
altered the court shall see that it was not improperly
made 15 C. L. 409 -

substitute a higher one. Lemur it is said if the bonds
given by a stranger (Paw 423- Ch 23) only a conditional
security - & a contract of a given degree cannot be
extinguished by one of the same degree - it only gives
another action (L Paw 424- Burn 2 L 579 Ch 2 577-
812 Ch 3- 621 when pleaded by way of accord & satisfaction
(see the distinctions (Lemur N 126- 5 Eo 17. Secu 426- 5 East
272 3- 257- 2 52 25 & 2aot 169) in this way it may
discharge the original contract.

But where a contract of a
lower nature is inserted in one of a higher merely by way of
inserted matter to corroborate & enlarge the remedy it is
not merged by the better good by deed - determine lies - one
by deed acknowledges the receipt of money to amount - covenant
lies or covenants on the deed (Paw 425- 28. 23- 18a. 19. 1 Ro 1118.
e Rule 256 Ch 8 649) Here the smaller contract is not
intended to be varied into a specialty - the latter is de-
signed only as an additional security & may be used as
evidence in an action on the former - But the party is
subjected for the property but once

Certified by deed cannot
be annulled or discharged by parol, & Co ligamini. Paw-
425- 5 6. 44- 2d Ch 192- Ch 2 254- Not by writing unsealed
Secund 291n 2 Wils 80- 276

Not by merely declining up
the instrument to obligor & obligee requires publication
of it (Paw 426- Ch 2 99- 2 Rot 2 110. Palms 156) Even
& payment or other & satisfaction of a bond is not

a discharge the payment &c of the money due upon it is sufficient Pow 450-428. Cr 8254. folio 192 dated 1614

So

accord & the "deemages" annexed or covenant is a good discharge for the deemages Pow 427. 6 Co 43. Cr 3799
650. folio 125. Cr 8408 24 Nov 1618

Whether the right & obligation created by a contract made in the same terms the contract is discharged at Law Pow 458 & Cr Obligor becomes Esq or Admiral to obligee & Co 130 Part 2 folio 234
dated 62-1625 15 L. 153-8 Ra 699. Hely 147. May 226

So

If obligor marries obligee the contract is generally annulled by the legal unity of the parties Pow 438-44
Laws of a bundle made in contemplation of marriage & to be executed or performed after the determination of the marriage Pow 442 folio 216 Cr 857- Lat 285-
Co 2515 Cr 84. ta 17. 582 281. Holt & Hobart contra

Contracts

may be discharged by act of the Legislature Pow 445-
Lat 198-8 M. 87. 25 W. 258 In a contract to do an act afterwards prohibited by State So also by the act of God & Esq Lepeha covenants to leave all the timber trees growing & they are blown down by tempest Pow 446 10 M. 268-16098 May 26, 16
is a bailee a horse to be to be returned so & the horse dead & disease without bailee's fault he is exonerated Pow
447 Part 15 48-1

A license to enter on land not insinuating to convey an
interest in the land is renewable 15 March 1871. See Blackst.
308 & Sautin 374 - such license to make a tunnel
there, depth being to take water to off said reservoir at
any time 4 East 108 14 Length 267 10 Width 246 rise
11 Mts 536 160m 570 420m 81 £775

Rights acquired under a by virtue of an instrument under
seal can be waived only by an instrument under seal
34 C. & D. 414

If one party to an agreement before he is bound to
perform his part & without preventing the other from
performing his part dies, the survivor will perform it is no
abandonment of the contract 34 C. & D. 325.

When a contract of sale has been fully executed
by the vendor no fraud on his part constitutes a
bona fide bar to an action for the price unless
the thing sold was absolutely worthless or the
vendor has retained or reconverted the property
or disengaged the fraud. But if the defendant
in such an action may in general avail himself of the fraud
by way of recoupment tho' he has neither retained
or reconverted the property & if such defense go only
to a part of the consideration he must give notice
of it to the plaintiff if it go to the whole amount - 5 Mill. 63.

So if he covenants to serve 3 a year for a sum to be paid in half yearly instalments & dies after the first instalment & before the last - 3^d he is not liable for for the last 1 Pao 248 - But a contract wherein partially impossible must be performed ex pao 448. Head 254

So if one is bound in a bond conditioned to answer, binds by a certain day 2 days before the day tho the penalty is saved Equity will decree a conveyance against his heir 1 Eq. Sec 18-

But the act of a third person cannot regulate a man's contract - Ex Bond by A conditioned that B shall appear in an action on 8th day, notice & trial & judgment is against him & will satisfy it & upon 21st day notice & judgment is against him he is not bound to satisfy it 1 Pao 251 - W Jones 441

Nowhere a contract is by the terms of it to take effect or to be varied or annulled by the act of a third person his act will operate upon it as provided by the agreement - Ex Contract to buy property at such price as I shall name - the parties are bound by his claim & if he refuses to set the price the contract becomes void 1 Pao 418-16

When one has separate demands ag^t several and
offer of one sum for the debts of all will not
support a plea of tender stating that a certain
portion of the sum offered was tendered for one
so a sum tendered in full of all demands
being demanded is last 116 £117

Deft cannot plead a tender as to part & the goods given
to the whole demand Recd £ 15 5/- Dec 97. Adr 197
3 starch. 139¹ 1397

Prov that deft put his hand into his pocket to take
out money to pay the debt & before the money could
be taken out off left the room & no money not
produced until creditor was gone does not support
a plea of tender £ 4 6/- 388

Where deft said "I came to pay you \$5. which I owe you"
he puts his hand into his pocket but did not produce the
money & off said "I can't take it the money is in the
honor of my letter" hold no tender. After this day night
have found a dispensation on part of off 27 Oct 378
4 Esp 68. 3 Can. & Pa. 342 10 East 101 5 T. N. 432, 3do
683. In such case the creditor is entitled to a presumption to
ascertain whether cost has been made 18 Nov 689

If the damages are not matter of computation money
cannot be paid into court 3 Barn 1126 3 Star 90b
88 R 47 1 do. 710 1/24 In an action for breach
a promise of marriage 3 Bos 14 / vid 1 H B 1
299 in n 2 1/2 & 128 qu

If a note is payable in installments articles & no place of
delivery is designated it must be to the creditor - when where
payable in articles of presentments or payment of his goods
the delivery is thus to be made the delivery is thus to be
made at his shop store farm or 4 Head 379 5 do 191
5 L 116 576 2 Recd 400 16t 255

A tender made to the managing clerk of an Atty. who at
the time disclaims authority to receive the money is
insuf 28 L 324

If one offers a sum "as all that is due" it is not a good
tender 34 L 380 the tender must not be slipp'd
with any condition 34 L 293 12 do 23.24 14 do 338
L 1194 n

L. M. Ladd
Nov. 20, 1892, Vol. I

1000 ft.

A tender in bank notes is not objected to at the time is
good 2. Bob 526 vise 3. D. No 554 Below. 173 and notes -
7 John 476

Note payable as a certain day - interest payable quarterly
place of tender before the day - not good - for the interest
is for the mutual benefit of both parties. 7 John 66 &
If payable one or before a certain day is payment
or tendered before the day good? 2 W. 173 year -
where the time given for payment is solely for
the advantage of the debtor can he tender before
the day? Aut. Supra 817 2 W. 150 Bull
174 to Litt. 212. 6 7. 173 231 174 1. 6. 174 183
294 7 Ct. 377 170 174. Kingman v. Pine Bar. Lender D.

A tender to be good must be unconditional so that
if more is due off may limit his return for the residue
If off offers to take a sum tendered in part of his demand
& deft would only allow him to take it as a settlement
it is not a good tender 25 C. 375 3 Barns. 50. 51
But 173. He who makes a tender must do it in
such terms as not to cause the other party to make
an deduction by taking it 34 C. L. 530. "A tender & one
\$5. in payment of a debt good"

Good tender.

If the money is being deposited with a bank or cashier it is up to the bank if it is regular remitting a good and lawful sum when the bill is drawn & paid. 18 U.S. 147, 157, 168.

So a tender of foreign money is regarded as a good tender. 18 U.S. 147, 157, 168.

But a tender of money will be deemed good if it is in the form of a bill of exchange or a draft on a bank.

when pleaded.

In actions where the plaintiff sues to recover the amount of a bill it must be recovered in the form of bills. 18 U.S. 147, 157, 168. It must be a note of hand or a bill of exchange or a draft on a bank payable to the plaintiff or his or her order. It must be a good and lawful sum.

When the defendant is to pay at a certain time and at that time is owing only \$1000.00 he may afterwards owe him the sum of \$1000 more and liable to sue him with the bill 18 U.S. 147, 157, 168.

In law left it must be tend to a good and lawful sum. It must be when the bill is due. not enough time to sue him for money after the bill is due. 18 U.S. 147, 157, 168.

Same is pleadable to a good and lawful sum of \$1000.00

1198 Under when headed

below you will see in what time it is the practice for you to
call money & to withdraw money & when he has sold you
for the Plaintiff or his Agent in store a short receipt
of account of money owing for the goods delivered the amount
is not received or otherwise. Wm Blod 21 Nov 1836.

2)

When this 2 form is held by yourself to the Agent or
Broker named also place a short or such note as follows
between the two documents - Let the Agent sign

that it was he who the document seen sent to you at
the time & place & when he believes it ought to be made
visible when time of the day he can take a long time
to do so for he ought to be allowed to consider all that would
be done to ascertain what he has agreed to be responsible to
you for £ 1238 7 1/2 or £ 103 17 1/2 in sum or part
but part of the case is that this amount of loss for a
broken article or damaged by the Agent. &c &c

Your time is now a longer time & in consequence because
from the interests the seller & the Agent to that he might
at all times receive his wife from the meeting this morning
was enough to keep & that he has been doing, causing
some disturbance & trouble. Exp 1818 Aug 18.

Paym^t of money into court

The next day was a lesson in most
interesting & instructive money facts and that he can make it now

for execution. And it is no plea & may sign if so, & p.
that other b38. Pay out of money into court admitted
1/2 Mr. 280 and 1/2 M. 63. or 280/ contract date is the determination

I doth pay money into court but does not afterwards pay
the P. but costs can be taxed twice if we agree with the
action. See 1st & 2nd 220.

If the money is deposited back to provider in his action
it is either on a final for if he does not have more
see that he is liable to be taxed he shall be remunerated
and bear his costs for attorney & expenses of damages
arts. up 1st 3rd 3rd 3rd April 2d

Whether the right to recover is personal the lessor need
be noticed by the party lessor or some one authorized to
know - but where it is not personal it must be notice
by someone who is privy to the party who is lessor
Sicel of today as witness. See 1st & 2nd 288

and may be made to any person who either as
lessee or sublessor - right to the thing owned
Ticket 3 Ba 10 art 1243 Ex Executor & Cope

The lessor lessor in most cases on whose account
it is issued & used must be made ^{and} notice given
Ticket 4 123 3 Ba 10 art 2869

If a just sum of money is taken away indeed it is
too far too great. And in the 1st, but in another
parties case more than as now. See 12. Hen. 6th.

It is a law as is to be made of any sort of goods whatsoever
which cannot be repaired to remiseable it shall be
strucke in considering them as goods of the said party
& for 1st.

It is contyned to saye & paye to my lord and master which he
will have when he comynge to my lord and master his lord
of the blake marshall by me to the bennet and
shall be paid to him then the remission hereof shalbe
in consideration of the goods and paye to his lord
the blake marshall & his lordshipps to be done by the bennet
and remission of the goods hereof shalbe paid to his lord
the blake marshall when will be gone. See 12. Hen. 6th. Iudic.
210.

Timewhen. When the contract is to pay money determin
yours & perform any act at a certain day then it must
be on such day. If because it may be to be paid or
delivered on or before a certain day, then it must be
not later than that day, but if for the payment, and being
delivered 5th & 8th & 12th.

When money is to be paid or delivered above one or more

If a tender is made to any one representing the creditor
in his agent it is good - to a suit in the master cause
1 Esp 349 - to an attorney's clerk at the office in the Attorney's
chamber 14 L & 386

If one is bound to pay or deliver a collateral article
a tender of it according to the contract is a complete
discharge & the person shall never be entitled to
the money - Slingsland v Moore 8 John 478 9 Co 79 a
Peytoe case -

of the time place & manner & effect of a tender of specific
articles see 3 Stark 139 7.8 2 6t 69 5 John. 119 & 4d 478

A tender may be excused by the declaration or other acts of
the creditor y Dlars 476 8 do 476 3 \$R. 683 10 East 101
Peaches C. 88 5 lbs by 4 Cts 68 5 do 48 -2 Dall
190 4 do 327

Said 12 M^ss 377. 8 East 170 that a tender made after
the stipulated time of payment is of no avail however
2 lb 659. 3 Stark 1895

If a tender is to be made within a given time as 15 Mo,
the last day fall on Sunday the tender must be on Saturday
previous. 1 Mond 42 2 lower 518 605 n 7 do 147 8 do
27 1 do 75 12 Janu 978 and 2 lb 82

and I say the law will be more strict and more severe than ever before - that it would be necessary to change the policy of the government to do the same - in taking care of the poor. Aug 10 1863
6th 1863

Little water and it shall not be any other time in this land every house the different communities for whom my other family will be the first for the right to do you. If you come to me today Aug 10 1863
8th 1863

but a few days you will be here at the different & different times & that may be the days of your arrival & you can stay with us & we will be the first to meet them at their arrival and you will find a place in which it can be made to you Aug 10 1863

I know it will be you's pleasure to have a place to live in a few years to the city and I hope to make room at our cabin and to have the different houses in the city for you Aug 10 1863

When a man has no right to his money & he wants to pay him when he pleases he must give up his right to the master of the money he will be the money & then it will be the master who will give it him & that is what I think

1860.

Question of laying money ^{utter} when given & the tender and
at what time at the place where it goes. The

question is first of all right of laying or if it is wrong provided
in which the rule is entirely clear. The claim can be
settled but if the contract is for the laying of some particular
article or article a paper or it requires that on account the tender
must make a special award of the tender when he is bound
to receive it if he will not do so in a reasonable time the
contract is violated & the tender is not obliged to make
the payment unless and may demand the money due him.

Upon the subject of laying a paper or a paper or a
certain construction it is necessary on an item of tendering
to set out the particular articles whereby they can be
known & distinguished from others. — for if the tender
says it is a ten thousand dollars on the account of the
articles and in the other articles \$10000. — said.

The same rule is for laying a paper or a paper
down on the part of the contractor who is to lay down
the paper or the paper is to be known & to have where
the contract is for laying of paper does not extend to
within or the end of the particular article intended
it is to be laid. I think the rule is the same on the

Where money ~~is~~^{to be} paid so many days from date the day of the date is excluded in computation of time of the time of payment happens on Sunday tenor must be made on Monday 2 Et. Rs 82 i.e. when the instrument containing the contract is not negotiable.

A tender of payment by a purchaser to obtain the article purchased is unnecessary where vendor demands the tender would be made up Rs 6 L 360

Said 1st Au 5th, 1 Sam 33.d. That a tender may be placed
to a quantum meruit qu. £ 255. But it cannot
be plead to a count for undischarged damages on an
agreement by C. L 41.

There is no case where a tender for part of the damages
sustained by a trespass will affect the amount of recovery
16 Wend 610 -

I deem in case of a claim by the Creditor unless he says
or has given the price. Up 18. 18d. 113.

Effects of a tender

1200

contract the tender may be filed in court of the state - but if there
has been a default - or he refused to pay the money then
arising out of the contract without excuse & it is due
to be the recovery of the tender never less than the moiety
of the money tendered in the tender but it can never
be less than one-half the amount - when
the tender is less than one-half the amount.

If he leaves - in consideration of the tender he may
pay him one-half only the value but he must
understand he has always the right to pay the money
tendered and may do so whenever he chooses - See the book
"Cases of Law" 1872 Vol 13 p 150

But when the tender is less than one-half the amount - he is
not paying only half the amount - he is

In the case of tenders of less than one-half the amount
paying 4/5 of the sum - 1902 - Ep 13. 1 Star 407. 281448

When a man makes a tender in payment of his
obligation subject to a condition which
renders the tender void if the condition is not
performed - it is a valid tender notwithstanding
the condition does not appear.

1201

Eidsfjelde

With the aid of a typewriter & many hours of work
I have added a date of the many regions the work took

place where the author probably wrote of various &
the many changes would be very difficult to say but
would have to be left.

Change it King 2 Dec 168

If one have the estate of a minor in his hands & refuse to support such minor he cannot be sued on book by any one who furnishes such support whether he be guardian or not. If he be not guardian one may be appointed who will call the estate out of his hands & if he be guardian then he must be compelled to pay for the support by some other person than book debt 2 Ct 386

When interest may be recovered on book debts 1 Cr R. 32.

Book debt.

1262

A just suit will lie in all cases where book debt will but
book debt will not lie in all cases where oft. will - but
generally it will lie only for such articles sold & delivered
for the use of such persons & things as are let & hired
& for such services done by one person for another as are
usually in the ordinary intercourse of mankind charged
on book & wherein the law implies a promise that the
purchaser of the goods will pay the seller as much as they are
reasonably worth & that the performer of any service shall
receive as much as he reasonably deserves - 2d vols 167.8

A tort or any consequence of it cannot be the subject of this
action - nor can a contract as such - but where a person
wishes to do a certain act for a stipulated price the service
the not the contract may be charged on book & on proof of
the contract as security may be held of the sum agreed to be
paid / 2d vols 168 / and Pet. R. 78. Kirby 289 2 Root 130

One paid a sum of money to one person for the use of another
for which he alleged debt promised to pay an interest upon it & keep
it unpaid that this action would not lie 2d vols 168 Kirby 289

Decided that interest on a book may be recovered where there
is an express or implied promise to pay it - but where there is
an express promise to pay interest it must be proved by other evidence
than that of the party - the law will presume a promise to
pay interest to merchants where the party knew it to be the custom to
charge it Kirby 289 2d vols 168

This action will lie for betterments done to lands July 158/ but not for
use & rent of lands 1/2 Dec 168/ provided not our Courts decided differently

It will not lie for a mistake in a former settlement on books July
150 2 Dec 168. Root

2.

Where no price is agreed upon by the parties of a bill recover what is
recoverable & paid according to the going price at the time of
the sale - in which case any fraud or deception in the goods
brought may be taken into consideration in the estimate of their value
2 Dec 168-

Where there is an express agreement for a certain sum to be allowed
to recover that sum but ought to have the amount by overstatement
of them less over - It has been held that where good & true less
sold & delivered at a certain price agreed on between the parties then
in the action for rent paid days shall not set up for his expense
found or collection in the goods but shall pay the price agreed
therein notwithstanding a different action for the damage received in con-
sequence of the fraud see 2 Dec 169.

Decided that an order for expenses for value received is a proper charge on books
for it is customary to charge them on books 2 Dec 169. Root

Decided that where money had been paid on a note for which a receipt
was given & lost & offered a recovery etc. lies on the note for the
whole sum. Debt might charge the sum for which the receipt was
so given on book & recover 2 Dec 169. Root see gen writers

(1) May 10b —

Action on book will not lie for he waited in
the suit at the time to July 150. L & S 2.2.3 8

Action on book lies in favor of one at portion of
the other for sum or payment from the defendant
2 Recd 37.

Receivables, furnitures can't by his guardian may
be charged on books - 2 Recd. 188 via L 377n

If money is paid on Books by deft after action but
will it be allowed? 34. L & L 444 that a party after
action but cannot be set off but an order was
made that no execution should issue for the
sum thus paid

Giving a promissory note for a book debt is no payment. It only suspends the right of action during the time allowed for the payment of the note & a receipt in full of all demands for such debt does not preclude the party from showing the circumstances under which it was given & Idem 369.

After P has produced his book or copy he may not alter it so as to surprise D at trial. Root 273.

If a book debt is assigned it remains the property of assignee as it respects his own creditors until notice of the assignment is given the debtor 3 Day 376 —

Book debt

1204

Testimony. It has been held that the testimony of the parties ought only to be admitted with regard to the quality & delivery of the articles charged the letting or hiring of articles hired after due course of performance of service with the time employed - but where there is any scire facias or special agreement as to the price or mode of payment it should be proved by other testimony. 2 Rev 170. 1.
But the practitioner has diff'd. - 2 Rev 171. 18

Where any matter is pleaded in bar or any question arises on a bill of lading
prior to the parties cannot testify. 2 Rev 171.

The C. cannot except the production of books & papers but where the party refers upon the challenge of the other every thing done &
promised against the party referring - 2 Rev 171.

In both sets the amount if above £17 may be adjusted by auditors
a judge rendered for the sum awarded against the party in arrear
to. 28. 2 Rev 171 - £180

In this action where it appears on trial that Dff is in arrears to Dft
til balance book accts. Dft shall recover the balance of Dff with
his costs. 2 Rev. 171

If Dft neglects to exhibit his accts. on trial to be adjusted & shall
otherwise bring his action to recover the same if he succeeds
judg't - he shall not be allowed any cost unless he sues & appears
that he had no knowledge of the former acct or was inevitably
hindred from appearing & exhibiting his acct. 2 Rev. 127 & 102.

10th April

The suit must be prosecute to judgment or by stipulation
and within the time will not exceed 1 year 1855
28 May. £ 804

But in an action of B.S. one party may exhibit an act of more
than 6 years standing to controvert the others account for articles
delivered within 6 years - Day 245

Charges for any thing done or delivered under a
specie's contract but which afterwards become matter
of account by operation of law in consequence of
a revision of the contract cannot be proved
by the party held the Month 5/94 - the right to charge
must exist when the work is done or good deliv.
May 10/4 10th 73.74 16th 287 & £ 344

Book debt.

1205

The action of book debt depending Dept may bring his action of
book debt agt ~~off~~ for the prior suit will not waste the letter to it
may affect the act 2 dec 171. Root • Not R 171

when Dept exhibits his acnt before a justice it exceeds \$15 the justice
cannot award jngt for the balance 2 dec 172. &c 102.

* Both debts are discharged if not sued for demanded or amounted for
with the original debt or - specifically given for the balance
or unless the debtors name is interposed to the acnt - on creditors book
or by two witnesses within 7 years cannot be recovered if the original
debt be dead At 101 / but the time the debt is engaged in war
shall not be computed At 101.

But if both parties be living (ems) / the debt is bound by the U.S. laws
sued for at any time within 3 years of At 102 / but the time the debtor
is out of the state or the creditor shall be absent from the U.S. for
legally impossible to sue in his own name shall not be computed
as part of the time - At 102.3.

If the parties testify to their acnts out of C. their testimony must
be taken in the same manner as in other cases / At 101.2 and At 684

Under the head of H. debt to this section the Statute
of Limitⁿ may be given, no evidence 2 Root 209

July 28 1811

A man mediter having a specific article, in his poss^r of
his master can not return but must attack & if they can
be taken by the officer for such attachment, is not the judic
remedy 15 M^s 490

This is a remedy calculated to enable creditors to compel the debtor or their debtor, to pay over the debt to him where their immediate debtor lives out of the State or has absconded so that the creditor cannot compel him by legal process to pay the debt - this remedy is given in all cases where justice requires it - 2 Scopps.

(1) This action will not lie in case of torts for it will lie only for the purpose of collecting a debt. /2 Scopps. -

The creditor may attach the funds or goods of the absent debtor whenever they may be found /2 Scopps. At 52 p²/ & the attaching agent shall make the whole in any persons hands liable & he shall cause them to respond the just debt /2 Scopps. 2 Scopps. At 52 p².

Where such funds or cannot be come at so as to be attached the creditor may bring his proper action agst. the absent debtor & an attested copy of the writ or left 14 days before the time of trial with the absent debtor Atty or at his usual place of abode shall be a suff^{it} citation for the creditor to bring his actions to trial unless the absent debtor be an inhabitant of this state or has resided here when a copy was served must also be left at his last usual place of abode 2 Scopps. At 52 p².

The object of

this At. being to discover debts or concealed by debtors a garnishee will not be permitted to testify that he has no effects in an action agst. the absconing debtor - for he is interested in the result of the suit /2 Root 44 2 Scopps. 8. Neither will Dft. be permitted to plead that the garnishee with whom the copy at so^p. was left was not his attorney - 2 Root 43. 4. 2 Scopps. 8.

A foreign Letter ^{is} being handed in another State of America in
aberrant & delinquent 101. Q. 2

Foreign Attachm^t

1207

21

All debts due to any absent debtor are considered as effects in the hands of the persons from whom they accrue who are deemed agents or trustees a recovery may be had agt them in the same manner as for goods or chattels - 2 Rev 178.

The action shall be admitted to depend in the action agt the absent debtor; but if the debtor be not of this State a no person appear to defend the action shall be continued to the next C. & if necessary a second continuance shall be allowed to give time to notify the principal - 2 Rev 178 H. 12 p 3

From the time of the service all the goods & effects of the debtor in the hands of his attorney & lets come to him from any debtor are liable to replevin such judge as may be recovered notwithstanding any subsequent disposition of them & if the debt be shall remit or dispose of any effects after service of the writ or shall refuse to expose them or if he shall satisfy the sum out of his own estate 2 Rev 178 H. 12 p 3 -

When judg^t is attained agt the principal the creditor must take out ex^m & must demand for the fair value of estate a make demand of this debt be on whom service of the writ was made - called garnishee

The garnishee must expose the effects in his hands one^m or if he be indebted to the principal he will be authorized to pay the sum of what he owes, on the ex^m & such payment will be taken to an action bot by the principal - 2 Rev 178 H. 12 E. 165 - H. 13 p 1

If garnishee refuses to expose the effects or pay this debt which is the ex^m must be retained non est. agt the principal & also

18
A partner of a commercial house established in a foreign country & who resides there cannot be held as guaranteee of a creditor of such house on account of debts due from such house contracted at its place of location & settled so

In Eng the guaranteee is not an administratee willing to prove the justness of his demand (Lip 632).

Vid Root 553-4 where it is said that this is an equitable action &c

Foreign Attachment

1208

3

that demand was made of Gurnishee & that he refused
to show the estate he - 2 Dec 1789 demand must be made written
before the judge Post b

Then issues a Summons from the Clerk of the C where ~~judge~~ was
rendered agst Gurnishee requiring him to show cause why
he has not yet produced or caused to be rendered agst him
A H B p 4 2 Dec 1799

The defendant must state the whole proceedings particularly the
amount of payment of the ex^t of Gurnishee & his refusal - & if Gurnishee
neglects to appear or refuses to disclose on what ~~judge~~ is rendered agst
him as of his own debt A H B p 4 / This action may be tried by Jury
2 Dec 1799 Recd 158 - 295

If the Gurnishee appears & defended he is allowed by H. to be a
witness - but if in his testimony he denies that he has any of
the principal effects or is induced to him the H will be allowed
to bring other evidence & is not contradicted by the testimony of
Gurnishee - 2 Dec 1799 Recd 138 / Let he even not object to
admission of Gurnishee to his suit / 2 Dec 1799 Recd 307 / Let he
not testify in favor of his deposition cannot be admitted / 2 Dec 1799 /
Recd 149. / Post 7

Gurnishee may show any mistakes in a settlement for which
a note was given that is the ground of claim for 1799 Recd 138,
& he may give in evidence the principal amount paid out so
that Gurnishee did not owe him - for H comes in place of absent
debt 2 Dec 1799 Recd 138 353.

Judge acquits garnishers that they are jointly & severally agents
of the abounding debtor is good Day 238 1 Inst 473

The interest of one partner in a debt due to
the partnership cannot be taken by foreign
attachment to satisfy his individual debt
without showing what that right or interest
is D^r Et Re 514.

of property is of such nature & in such a situation
that it can be attack'd in the ordinary way.
Foreign attachment is not the proper remedy, 18 M^r 490

In an action by foreign attachment Dft cannot plead that he is not an absconding debtor for if the court be otherwise well satisfied it is suffice to hold Dft to trial - 2 Dv 179. 1 Root 276
 But garnishee upon sue-fee may plead that the principal is not an absconding debtor 2 Dv 179. 1 Root 276 / for if he is not garnishee is not liable.

Where a recovery is had by force of this action & the estate of the principal by force of a judgment taken from garnishee he is discharged from the principal & in an action brought agst him may plead the judgment & give the st. in evidence 2 Dv 180 Lsp 165. b 1 Dv 180 / 1 Day 498 Elmers 314

But if garnishee or suit of principal pleaded such foreign attachment or quiet, & in evidence he should prove that the principal was indebted to the attacking creditor & was it might be collusive between the attacking creditor & garnishee to defraud the principal / 1 Ch R 27. Lsp 166 / But principal may show that the foreign attachment was commenced after an original action commenced by force of which that caused the foreign attachment Lsp 166 1 Dv 77. dat 291. 280 / qd in Et.

Where to debt on bond Dft pleaded that the debt arose from him to P. who had been attacked by P's creditor or plaintiff C on C's part that his creditor had brought an action agst him the P. for the same debt & pending the suit had lost his attachment and held good on demurrer - Lsp 231 Lio 2 593 157

A debt can not be attacked by foreign attachment before it is due but the judgment on attachment before demand is not rendered

3 L. & S. R. 323.

An Executor is not liable in foreign attacht.
for a legacy in his hands 1St. R. 3 85
7 M. & R. 271. 8. 246 5. 289 8. 259

A debtor who starts himself up is an obnoxious. 2 R. & A.

Foreign Attachments

1200 5

till after it become due - because if Dept. pleads the attachment^{the Pff} might complicate this matter & leave good - (Cap 231.2 C. & E. 1847)

So too in C. & for our H. b3 p 5 says debts due before H. b5 p 5. says
are shall be stayed till the debt and the principal becomes payable.

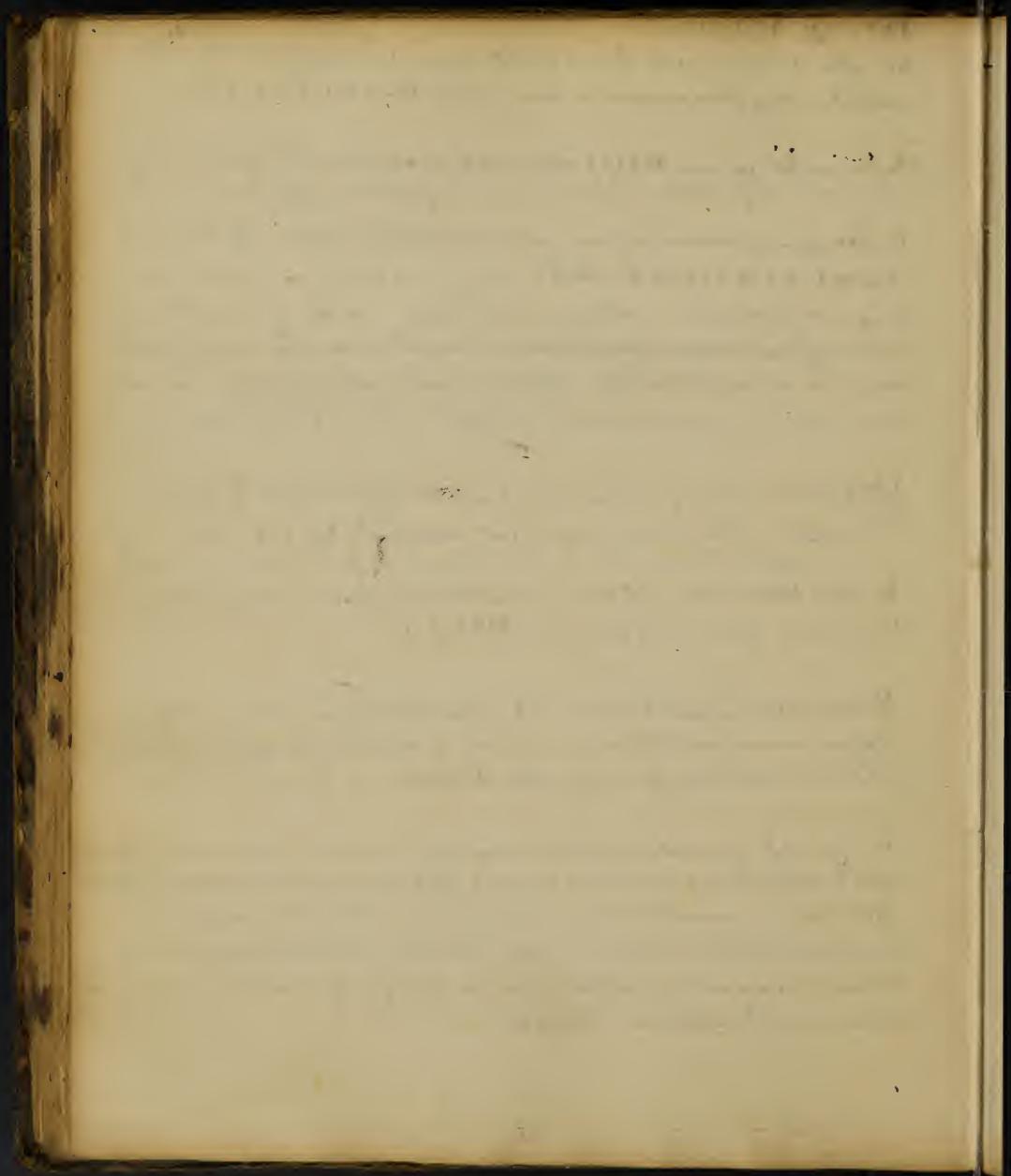
A debt upon record in Eng^r cannot be attacked by custom of London
Cap 232 14 & 312.13 C. & E. b3 / say you in C. & for our H. b3 p 5
debt, debt due - & this is a debt due - say you - for the H. does
not appear to contemplate debts of record as it says the "agent or
shall be obliged to account for the same under oath" or "and the
same is the same here as in Eng^r"

If Dept. pleads a foreign attachment it should appear that Pff / the principal,
less notice of the proceedings or for attachment Cap 232 3 mils 297 /

In this state the officer is liable to respond the judgment from
the time of serving the writ H. b2. p 3.

If this action is not before a Justice of the peace & no attorney
appear to defend the case must be continued three months
at least & not exceeding 9 Mo H. b4 p 1

Sci. for a. agent guarantee must be signed & be made returnable before
the Justice who issued the original judgment if the demand does not exceed
\$15 when it must be returned to the C. & C. in the County where
one of the parties is his agent - but if the Justice he said the
demand does not exceed \$15 it must be signed by a master returnable
before any off^r or Justice - H. b4 p 2.



Effects in garnishee hands must be remanded within 10 days after
they are liable to reach the judge / & before / & even they are not holden
2 Root 324 - 233 ante 3 -

Debt & deficiency shall be maintained agst garnishee so unless lost
within one year after the right of bringing the garnishee it shall /

If it appear on the hearing of deficiency that the debt was the principal
was not payable when demand was made on it the garnishee
shall be allowed his reasonable cost in defending agst deficiency to be
 deducted out of such debt / & b. 3 - / -

Where it appears on trial that the debt was bona fide unpaid
before the service of the writ for judgment / it shall not be liable to be taken
by this process / 2 bis 180 / & if Garnishee give the opigner notice of
the suit or required by St 13 pt 2 opigner owes not indemnify him
or there required he may suffer the defendant all expenses & shall
be a party to the claim of opigner St 13 pt 1 id Root 234 545

If the opigner or owner shall give security as required by St 13 pt 2 make
effectual defense agst the deficiency they shall be entitled to the full
amount that shall be recovered agst the off in deficiency / or attaching Co -
but if the fail to make such defense the judge remanded get
Def in deficiency (for Garnishee) shall be a party to their claims at seq
St 13 pt 2.

If opigner do give the security at suit - if garnishee on due notice
gives him neglect to appear & decline on oath (if required) on
trial of deficiency the opigner may recover of deficiency the sum
to the no benefit of the St - or security given St 13 pt 3

In so far as garnishee it must be owned that principal
was an already existing debtor & do described in the original
paper - 2 Novt 238 Garrison & Pease C.C. Litig^P by.

Copy was left at house of garnishee he being absent
at time his return without actual notice of the proceeding
he paid the debt - payment held valid - So where the
contract was to do an entire service for an entire price
& before service performed person served held that nothing
was due 3 Met. 302. 5 Pick 65. 12 Clo 268. 268.

The C. before whom any debt is pending may issue
a commission to take the disclosure or oath of garnishee - in certain cases
2 if he refuses to disclose he can take no advantage of the debt or
security at seq - 1 Root p 35 - ante 3 7

If the original creditor or assignee commence an action for the recovery
of debts or effects under the claim of a foreign attachment - if first judgment be
rendered for P'st the C. may allow debt or cost to be deducted out of the
debt or in many allow P'st cost or allow no cost to either party at
their discretion 1 Root p 4-

Goods in the hands of fraudulent grantee are liable to be levied on
by foreign attachment 1/2 Root 528 Rulz 279 - 1/3 too if he holds the
effects in trust under a fraudulent conveyance 2 Root 129 P 2488 252

Property taken & endorsed upon it & delivered to the garnishee / notwithstanding
the fact is not the principal - 1 Root 295

If principal is not an abounding debtor a garnishee is not liable
& may take no advantage of it on his / see 1 Root 276 295

An ~~abounding~~^{defining} debtor cannot sue back the garnishee
but he can offset of his own hand & see 81

12/9 00

12d. 6. 11

12420

1850

123

Voluntary courtesy No man shall do another a
kindness & then charge him with a recompence
16cunes R. 585 1 Saund 264 n. 1 Foutb 336 Wlob 106
Ycht 41. B 8 D.R. 310 5 Iolen 178 w 3 do 434 8 dw 436
10 do 361 28t R. 410-

A mere voluntary courtesy will not support a claim for it
Wlob 106 Esp 87 -

and that shall be deemed a voluntary courtesy which has
been undertaken without a prospect of a certain recompence
Esp 106 -

An action cannot be sustained for trouble or in going to a place
to procure land for debt 14. 6 D 442

of joint securities pay money for their principal must do
secondly either, paid from a joint fund unless such fund
be a joint security over an unparticularized fund & losses
168 3 Dec 225 2 Nov 184 16d 1.8.9 2 8k 282 5 Eps 194

Prum

"I hereby agree to remain with Mr S. two years for the purpose of
learning the business of a draper's & conduct said partnership
for a Whilence & during 84 14 to £310

Assumption can be sustained by a manager for supplying
necessaries to one whom ~~doe~~ was bound to support
5 Ward 558 cites 4 Tols 72 13d 480 14d 188 16d 288
1 Eps 270 2d 739 3d 176. 21 go. 3 Dec 252 5. 148

Agreement

This is an action of trespass on the case whereby a compensation in damages may be recovered for an injury sustained by the non-performance of aspects agreements (See N.P. 53).

(Agreements are distinguished into agreements by specie & by fact (See 53. Vic. Contracta) This action is confined to agreements by fact. - Covenant (Bro. 505) or debt being the proper remedy for the non-performance of agreements by specie. - If agreements are merely written & not specie, they are fact. (See 55. in Debt N.P. 53.)

The essential parts of every fact agreement are the promise or undertaking of one party & the consideration on which such promise or undertaking is founded (proceeding from the other party). This promise is expressed or implied (See 53.) In actions of Agreement a consideration must be stated & proved for in fact agreements this law will not imply a consideration (Vid. P. 8. P. 6.) said that Bills of exchange & promissory notes form an exception to this rule - In as they are not considered good specie after transfer. See Vic. Contracta 216. 375. 2. 826

To sustain Agreement there must be a sufficient consideration - i.e. a consideration either of benefit to the Debt (3 P. 24. 638) or of benefit to a stranger (Bro. 2194) or of damage or loss (1 East 194) sustained by Pf. at the request of Debt for ex mero deo. (See 505 & 308^a 8. 810. See N.P. 53)

Any act of Pf. from which Debt derives advantage or any inconvenience or labor sustained by Pf. however small (Bro. 80. Bro. 670) it may be a suff. consideration if done or suffered by Pf. with the consent (1 P. 21. 8. 610) either

Consideration.

Where there is no personal credit given this action will not lie 15 H. 108, 2d H. B. L. R. C. B. 170.

22 ev. 210

4 P. C. 227

2 Laines. 246

Where an agent acting in the service of his principal is subjected without his fault of his own to a loss by a gross neglect but sustained by a third person such loss will constitute a sufft consideration to support a proceeding to indemnify the principal 1 Ct R. 522

In br. our notes of hand are considered to be in nature of specialties - want of consideration cannot be advanced to destroy them 1 Day 350 nor failure of mind to avoid a specialty 8 Laines 292 2 Will. 347 2 John. 177 - 13 ac 430 d. & d.
8 Laines 576 510 d 1882n 8 Ct 9

Assumption will not lie by the opines of a br. to recover the account due except on an express promise that his right has been recognized special payment made to him or a P. J. Bos 250 n negotiations made for payment of the balance of March 21, 1812, or on 16 10. 945 February 13.

See op. in Ct. Recd. No 53.

except or implied of the Debts or in the language of pleading "at the special instance & request of Debts" - The consideration however must be of some value, in contemplation of Laws or Dispunct it cannot be sustained (1 Roll 23) ~~viz~~ Ebrode 667, 1^o B. 920 where it was adjudged that the acceptance of a sum of money by Debts from off to pay over to Pff creditor was a sufft. considerⁿ to support a promise by Debts to perform the trust - sed - ~~viz~~ Peal. 281. where the C.L. Justice considered the detention of the money as a damage to Pff - The rule however is correct (emb. Sels. 54.5. Est. L. in consideration that B. should make ^{on estate} at will to him as his owner should derive promises &c - Promise holden void - no sufft. considerⁿ for B might immediately determine the estate. 1 Roll 23 - 3 Econ. 88. Sels. 55-

In the mere performance of an act which the party was bound to perform is not a sufft. consideration. L. where master of a ship ~~and~~ ^{his} master promised to pay the mariners an extra sum for extraordinary exertion - promise holden void - for the mariners are bound to exert themselves to the utmost in preservation of the ship - Sels. 55. Peal. R. 72 - In natural affection the sufft. to receive an use is not a sufft. consideration on which to found an Appunct. Bro. 2. 755 P. Love is not a sufft. considerⁿ on which to found an action 2 Econ. 30 Sels. 57 m. See D. B where it is said that the release of an egg of redemption is a good consideration. & the C.L. will take notice that more is in equity to be in Chf. See gen. siv. 2 Wil. 87. where it was held - that the release of an Egg of redemption was of no value - correct sive.

In what cases it lies. Forbearance to sue

3 Bos 148 n
Loud 437
Duc - 210

When one of several facts stated in an action of debt^t Bos 101 n is an express promise it may be proved by plaintiff the greater more than 3 years before action brought
1 Et. 16 516

Where a corpor^r is acting within the scope of its legitimate purpose all general contracts made by its continuing agent are express promises of the corporation & all duties imposed upon them by law & all benefits conferred at their request receive implied promises for the enforcement of which an action will lie 7 Co. 297

307 12 Johns R 231 14 do 319

If one make a promise to another for the benefit of a third the third may maintain an action upon such promise yet if 28 n. 1 Regn 1. Sec 23 18 Green 284 1. Kent 318 322 5 Re 302 18 Green 471 2 Lev 210 Loud 443 1 Bos 102 n B 3 do 149 n a 15 M^r 286 1 Duc 2429 3a 1492 1 Johns 2 129 2 do 204 - This rule does not extend to contracts by specialty Pet 3. 177 and 166 4

where A. was indebted to B. in one sum & B. indebted to C. in a less sum a promise by B. to discharge A. of so much of his debt as amounts to B's debt to C. holds good as a good consideration for a promise by A. to pay C. the debt due to him from B. See 56. Col. 1. 49. So where Ex. agreed to take a less sum payable by instalments in lieu of the original debt in consideration of which Cott. promised the Ex. (Pf.) to pay him the lesser sum - holder suff. consideration - altho the acceptance of a less sum for a greater is no satisfaction - yet here the nature of the action was changed for in an action for the original debt must have been in the distinct but by the agreement it became the absolute debt of the Ex. who became liable for a debt, to the amount of the original debt. See 10. 11. 56. Ex. 28c.

If a creditor at the request of his debtor forbear to sue him for a certain time it is a suff. consideration for a new promise by debtor on which to found the action. See 87. 56. 29. So if a creditor at the request of A. S. forbear to sue his debtor for a certain time it is a suff. consideration to support a promise by A. S. to pay the debt - tho by H. 29. 64. 2. this agreement must be in writing See 57. But its being in writing is matter of evidence at the trial & need not be stated in the declaration (laws in pleader form, id) & the court after verdict will presume it was agreed to be in writing. 4 Johns. 287.

' Forbearance to sue an Ex. (having effects)

Forbearance to sue.

19th Pow C 353

Moor 1167

Civ L. 19.455

The action on an implied debt being an available
one the sum only justly due at the time of
the promise laid in the debtors can be
recovered & Dft may prove all equitable
circumstances which can avail him to Ut. Supra
leaven the demand but they must be ^{Nov. 17th}
such facts as are out of the transaction
from the consideration of the promise
but he can set up no separate independent
claim nor can ~~any~~ set off of mutual demands
in Eq. be made in this or any other action
164. 16 899 in note -

When work is done under a special contract not
completed within the time limited but performed
in after the day with the consent of the other party
a recovery may be had on the common counts but the
compensation will be that limited by the contract ^{19th Pow C 353}
unless during the progress of the work notice was
given of an intention to claim more or unless the
debt by his wilful acts or omission prevented performance
within the time when off may render in a quantum
minor 16 Nov. 17th 586

for a certain time upon a simple contract of his testator is a good consideration to found a promise by him to pay the debt (Bro 147, 1 Inst 55, 120 123) To forbearance to sue on his bill for a reasonable time for the debt of his testator the testator hence no action (1 Roll 24) But the agreement must be in writing by 29 Car 2 - 1 Green 532, 1 Inst 57.

But

forbearance to sue may be a good consideration it must be either absolute (Bro 1683) or for a definite period of time (Bro 147) or a reasonable time (1 Roll 34 p 183) Forbearance for a little (1 Roll 23 p 25) or sometime is not sufft. below 5^{rs}.

In cases where action is not against debt on a promise made in consideration of forbearance of suit an objection will not be allowed after verdict that the declarant does not state how the original debt accrued (for this is only indorsement to the action) (Bro 1548, 326.) So if declarant omit to state to whom of his forbear & give day of payment the omission will be cured by rescript. - 1 N. R. 172, 1 Inst 57.

But upon special damages it has been held not sufft. to state a consideration to forbear generally unless it be also shown that there was some person to whom he forbore.

1 Inst 235, 1 Inst 58 - The consideration of forbearance is not confined to forbearance ~~to sue~~ suing by action for desisting from a suit in Eng (Bro 8-68-) or the

Forbearance to sue

A promise to forbear suing for the residue of a debt in consideration of a payment of a part is made for no consideration 12 Dall 2426

Arranged on a promise to pay the debt of another Deft
may plead the stat. fraud specially in law 15 John 425

L

1b9

If A. agree to work for B. for such compensation as B. shall
deem right A. can recover nothing 5 Stark 1763 10 Mass 290
Taylor v Peacock 14 Dall 111 3 John 199.

Where credit is once given to one person it cannot
be shifted to another 116 L 308 5 Faunt 356

Aumpuit

the party is liable only in Equity (1 Rec 71) has been helden to be a good consideration (Selv 58.9) So arising from another complaint before a Justice of the Peace (Civ E-844, 881-) so forfeiting to proceed upon a capias ut ligatum (Civ E 909. 1st & 19) so staying the trial of a cause after costs gained (Civ E 868) is a good consideration for a promise to pay costs incurred Selv 59.

Forbearance for suit against debt where originally there was no cause of action is not a good consideration on which to found an Aumpuit. Ex A & B were bound jointly & severally in a bond (March 202) to C who released to him afterwards, B in consideration that C would forbear to sue him on the bond promised to have it withdrawn that the bond was discharged by the release (1 Inst 232) to C & that there was no consideration wherein an aumpuit might be grounded - and also Civ E 868, 206 28 and 130. 1 Rec 185 - 1 Rec 180 where a lessor, not by obligee against the heir of obligor alleging that the lessee's rights by descent ought to satisfy the bond debt determined to censure if he had not expressly alleged that the heir was bound in the bond so determine was allowed. Selv 59. 80 n Civ E 26 id Rec 183 para 94

The mere retention of landlord & tenant is a suffⁿ consideration for tenants promise to manage a farm in a husbandlike manner 5 H & 873. Selv 51

Debt due from A & B. A. is sued alone & compelled to pay
he can maintain no action agst B. for contribution -
for the just. shows no priority - A. should have proved
in statement that B. was not given 14 dollars Rs 322

Said in b branch 253 that a suit may often be
sustained agst A & B on the same contract & the judge
agst A. is no law - Peters C.6. R 301. 1 Peter Conn. R
290 n contra in cases of simple contracts - is a law
vid 2 Mrs D 1778

If a special contract is rescinded or performance suspended 2 C.R. 404
by defd off shall recover for services under it such sum
only as was agreed to be paid for the particular service
performed unless the conduct of defd has placed off under
some disadvantage when such additional expenses or
trouble may be shown to exceed the compensation
j March 123 4 do 285 1 H. 11. N.P. 236 1 Stark. R 275
Parker C 103 10 Dollars 36 £. off agrees to work for defd a year
& before the time expire without fault on his part defd discharged him
in ap^r for work & labor he may receive the sum to be paid for a year
Services 15 £ 2 39⁶ 4 lams 37⁵ 18⁸ 3 £ 2 33 weight also 66 8
5 do 405 antea 119⁶

The consideration on which Deth promise is founded must
arise from P^r - for if P^r is a mere stranger to the consideration
having done nothing of trouble to himself or of benefit
to Deth he cannot sustain this action - See 61 Vint.
3 - 4 & 5 59 B^rs - A promise by a constable to delay
the sale of property long ~~as the law allows~~ is
~~is without consideration & void~~ 2 Johns. 93 - 100. 3 Brooks
242 2 Johns. 386 4 Cott. 269) for the consideration must
be such as the party undertaking has a power by
law to perform or cause to be performed - for where
P^r declared that he being bailiff to S^r the Ch^r in consideration
that P^r would discharge him of a debt due to S^r promised
so - after verdict & judgment for P^r in Court below it was
reversed in B.M. because P^r could not discharge a
debt due to his master 2 Lew. 161 See 63 3 H^r 22

Consideration past & executed will not support a subsequent
promise unless the act was done at the request either
express or implied of the party promising. 1 Rot. 11 See 64
as if the servant of A be arrested & P^r without the
request of A lets the servant & afterwards A promises
A^r to indemnify him - the promise is void for the
bailing which was the consideration was past and
executed before P^r - 272 1 Samud 264ms. Not 106. where
it was holden that a mere voluntary country will
not support Aumpfit -

"But where the act which forms
the consideration is done at the request of the party promising
C

If the party derives a benefit from the consideration, it is
suff. for it is equivalent to a previous request / 1 Scund
264 m / A pays a sum of money for B. & B affirms
agrees to the payment. - But it must be deserved in
the declaraⁿ to have been paid for the special int'res
1 request of Wolf Gelot 41 n^t - 16a R 583. 11 M^s 37

164 Lethes 192 10 as 244 se arie Owr. 144

Promis to pay £ 20. for that thou hast built me a house
or in recompence for a trespass done - less for the service
does not go along with the considⁿ - Dr. & H. 181 Nov^d
5. 2 Scnd. 30 Pow lew 348 Gelot 41. a^m

Assumpt: in considⁿ that Pff had sold 20 Sheep / 160 £ 142
less lesome less for debts and / Dz. 272. / that Pff had
before that time sold seaway² to Df^t a farm / Lethes
n 87 - less stee 93 3. 2 Ban^d 1141

610 B John 284

The overseers were legally liable to pay in such case
without any stipulat^t promise for by law they are oblig^t to
afford the necessary assistance - 3 Reg 253

the circumstance of the promise being subsequent in point of time to the consideration will not affect it - As if the request be to endeavor to procure a payment for A & after B has made such endeavor A in consideration thereof promises to pay him a sum of money. This is said to be a good consideration. *11 Will II. capl. 6.* See also to the example in -

It shant be stated in declarations on executed considerations that they were alone at the request of the party promising for the afterwards. The Court will sometimes imply a request yet after a judg't by defendant the obligation has been discharged. *Stuc 933.* See also *3 Burn 1671* where William Just is reported to have said that the above case in *Stuc 933* was a strange & absurd case. *Solv 65.*

If a person is under a moral obligation to do an act & another does it without his request or subsequent promise to pay will be binding. *Bull 129, 147, 281* &c - where a parson was taken suddenly ill & an apothecary attended her without a previous request of the curate - & afterwards the curate is promised a reward good for them were under a moral obligation to take care of their poor. *Lamb 66 P.*

A moral obligation is not sufficient to revive an implied promise in law - As where the parish officer of C laid out money &c for a parson of the church of B who was taken ill in the parish of C

Moral Obligation

that an express promise founded upon an antecedent moral obligation is sufficient to support an action
Lanc 288. 290. 344 - Ch. D 945 D 945 28 Nov 184
Bell 147 - Louth 531 690 3 Bos 249 m.

Where the creditor agrees to take nothing under a
commission of bankruptcy in consideration whereof
the bankrupt makes a new promise to pay the debt
any thing being given such new promise is binding
20 Eng. 2d 314.

Tele. 68
16th 255

Dougl. 101 w

cannot not be removed for his illness - it was held that
the law would not receive an implied promise in the
parish of B in which the parson was legally settled to
receive the money laid out by the parish of C - after
the parish of B had notice of the parson's ill-health - East
505 - Selv. 6. vid y John 88 14 do 188 1b do 284 n

The master is not liable where an implied
agreement to pay for medical attendance on a
servant who met with an accident in his service -
3 Bos. 24.

The debt or duty remains uncancelled yet
if the party's liability to be sued is suspended only either
by the intervention of some rule of law or provisions
of a Statute or subsequent express promise with regard
to the suspension & restore the liability. Hence where
the holder of a bill of exchange (East 16n 9^o 231
246 73) had failed in giving due notice of the dishonor
of the bill to drawee - holder that a subsequent
promise by drawee that he would rec the bill paid would
support an implied promise (Selv 67) to pay a debt incurred
by him (P 16 889.) - promise by bankrupt after
his certificate to pay an undischarged debt. (Causp 544)
To a promise by a person of suffrage to pay a debt
contracted during his infancy and binding (Selv 690)
- in this case some leaders declare on the original
cause of action & also in most cases on the subject
promise the consideration of which is stated to be the
debt remaining unpaid - (q.v. With the promises of the

Where goods are sold at one time on one & the same contract
Vendor cannot maintain separate actions for separate parcels of
the goods 15 Johns 229 1432. 2^d Est & 1433. Should multiply suits
16 Johns 122. But where the demands are separable
and distinct separate suit may be instituted upon
each - Ex. Services rendered at one time upon a distinct
contract of also services rendered at a diff^t time
upon a diff^t contract 16 Johns 137 But if after all the
services are rendered a recovery for all may be had but
one suit can be brought within the rule except 3 March 493
1do 487

In ~~Assumpsit~~ on a note for specific articles 116d 434
the highest market price after the note falls
due & before trial is the rule of damages
3 Cow 82 yea 681 ied 3 Stark 1135. 1 East 203 2 Bla C²⁴ 281 211
624 ²⁴ Cimpare v. Carroll 8 Jaunt 540 Leigh & Patterson 2 Johns 588
Shephard v. Hampton 3 Wheat 300 that the value of the article 4 East. 190
when it shd have been deliv^r is the rule of damages

One More Stock has been sold under a forged power of
att^t may sustain an action against him who holds the
proceeds of the sale 27 Est 361.

Agreement

at supra review or void ~~sovereignty~~. Sent not wth 2 M^r 63)

If the subject promises conditioned (2 H^r 151. 116. digest. D^r Loughborough C. 8.) it is imminent on ~~if~~ to see the condition performed. See 69.

To maintain Open Court

The agreement must be legal - i.e. 1. It must not contravene any rule of the C. & S. the express provisions being first (3 Leon 222) or the general policy of the Laws (See 69).

If either the consideration or promise be illegal (Bro. 103) or if part of an entire consideration be illegal or if the promise be to do two or more acts one of which is illegal (D. Jones 24) an action cannot be maintained for a breach of the agreement (See 69.) Ex.

Unlawful presentation (Bro. C. 337. 53. 61.) Promise to some officer to make, for breach or neglect of duty (D. Jones 24. Carter 223. S. C. - velvet 197. Roll R. 313. - Peake's Cas. 180)

A promise not to use a trade in a particular place is legal. Bro 5596 re Contracts See if the promise is repugnant to public policy. vid (H. 131 322. 7. & Contracts)

) 8 M^r 89 See 73. 2 M^r 17. Lambys. V. P. 655
vid also 8 M^r 142

2. The agreement must not be unconnected with or arise out of an illegal transaction - Hence where an agreed was made between two parties (3 M^r 454) subjects of Eng. for the sale & delivery of goods in Germany for the purpose of being removed into Eng. It was

If Justice were money entrusted to him to deliver
care for negligence is the proper remedy 8
Stand 268 Comp 414 3 Be & C 626 But if he
keep it money had & received 30 L 46

The measure of damages for the breach of an implied warranty
of title in the sale of a house is the pure profit intended thereon and
the costs incurred by the owner against the purchase or his vendor
if vendor had notice not the costs of defense 5 Nanc. 535 Rule
on a suit for breach of contract the damages to be recovered will
be such as necessarily arises from such breach if other damages
to be recovered they must be especially alleged & proved - Example
of costs defense - 5 Handl. Supre. Second Ed. 136 3 Esp. 1st 53
10 cent 566. 7 do 152. 10 John R 517

noten that the vendor will not maintain an action for the value of the goods - vid also 4 M 467 1 Inst 129 - 5 M 599 cited East 98 Cap 341

To all contracts respecting insurance made void by 8 Geo 1. 6 M 405. 2 H 131 279 - 2 Bos. 371 17 Cownton 12 8 -

Where one of two partners had been compelled to pay the whole ~~ye~~ loss on an illegal insurance (Pech. L 8) & the other partner had paid his moiety of the loss into the hands of a broker it was helden that this moiety could not be recovered from the broker by the partner who had paid the whole loss. 2 Bos. 76 See quo 1 Bos. 3 - 12 East where it was helden that if money is paid on an illegal contract executed to a third person yet the person for whom it was paid can recover it of such third person.

Can an officer permit a prisoner to go at large (8 East 171) in consequence of which the officer is obliged to pay the creditor the officer cannot maintain an action for money paid against the debtor for he cannot receive a cessation of action by payment of money for another or account of his own breach of duty - "Laws of officers as being guilty of no individual conduct. Peaches, Cas 143 - 8d 8. 30

3 The agree^t must be fair and honest & not entered into for a pecuniary purpose for fraud will vitiate any contract - Eg. A gives B a sum of money for goods in consideration of £ (3 M 551) - a secret agreement between B & C that C shall pay

Direction does not lie against an officer who contracts
as agent for the government 18th 17^b 1812. 2d 11 Stat 36 159
18th 674.

A. promises to pay, the sum of B \$50. for the use of
B. Be may sustain an action against A. 10dth 388

A certain sum payable in collectable articles at a
certain price - the value of the articles not the sum
expended in the sale of damages, 7 Cow 182 1611
See 3d R. 58^a Cest & 5^b Head 1345. 2 Dots R 235.

Rule in Paus. in accordance with 7 Cowen sup^a Adols. 346
11 Doug R. 4455 5^b Harg. Lern R 85.

If taxes are illegally imposed & paid voluntarily can they
be recovered back? 3^b Head not 17^b 1812 in Williams v.
Bruce 5 6t. 190.

Cop. 1.

If one order goods of a particular description & diff^c
ones are delivered he must return them in a
reasonable time or pay for those 11 C. L. 300

Abpumpit

As a further sum for the goods was bidden and - paid
on ac- recd also 24 Nov 763- 4 Dec 166 4 East 372. Below 77.8

4. If the agreement be of such nature that the carrying it
into effect & enforcing it will give a sanc*tio*n to immorality
an action can not be maintained upon it of turpi
c*on*tra** non eritis actio. Ex Lodging, let to Coff for the
purpose of prostitution - action not maintainable -
(Exp. Cas. 13 - 4-97 - Below 79) Sees in an action for
washing &c of articles, in which the prostitute appeared
in public places, & tho' He knew Coff to be a prostitute
(1200 340) that circumstance alone not being sufft -
He must have expected (Camp. N.P. Cas. 348) to have
received some benefit from Coff's prostitution

General Indebitatus Abpumpit.

The genl. Indebitatus abpumpit is in the nature of a condition
of debt & owes its introduction into gent. law to the
circumstance of Coff not being permitted in this action to
wash his lace (460 91-95. 360 wood 168 ne) Said in Below 81
who cites Inst. 23 - that it is a genl. rule that an Indebitatus
abpumpit will not lie in any case but where debt will
lie - but the authority of this rule is questioned in 2 Blaw
1008 & denied in Bramb. 439.

Indebitatus abpumpit is
confined to want of agreement - it will not lie upon a specialty
where the only ground which is stated as the cause of
the liability of debt is fully satisfied contained in the

Ind. aump^t. will lie on the implied promise arising
from use & occupation of land. 4 May 228 Root
233.

2.472

Ind. left. will not lie where there is a special
agreement. 2 Root 99 / do where there is a special
agreement subsisting & unrescinded the action must lie on that
& no recovery can be had under the common counts 14 Hh
a 327 y do 172. 12 do 274 13 do 94. 19 do 212 Day 10
18 do ~ 8

Assumption cannot be maintained on a running
account between merchant & Broker the proper remedy
at Law being an action of account & damages 238
Gill-E 192. 2 Met 781 in person 401 - that is indubita-
tive no evidence can be given of an account current -
nor between joint venturers those have been settled & accounted
between 4 Batt. 434 Oscar & Potemps

A pumpit

1225

specially & no circumstance is added but such as is provided
for by the specially (1 Edward 33. 1. Part 208) but where the
specificaly is only inconvenient to the pecuniary & commercial
intervenes a pumpit will lie (1 Edward 17. Sec. 81 n.)

It is plentiful
to state in the action ~~for what ever~~ the debt or duty
because in that it may appear to the court to be a malice
whereas an apprisal may be furnished & an opinion of
this may be taken advantage of by unit of error (Bro. I 2067)
or in arrest of judgment after verdict (Bro. C. 31) but it is not necessary
to state the particular items constituting the debt - suffice it
to declare generally that both was indebted to P^r for works
Blackburn Esq. Earth 2^d. Hob. 2 Sec. 153 - Sec. 115 Parag. 5 n
In an action of Indemnity upon an account stated not
necessary to name items but merely that one account
was stated for that is the course & practice - (1 H. 6. 42 n) the
accounting being the ground of the pecuniary in recoverable
(Bro. I 234) an account stated of P^r is not obliged to name the
exact sum stated in the declaration (Brett. 127 Sec. 81 n.)

The gentle
or common counts in Law Act. are those for wanted delivered
goods delivered & delivered - money lent & advanced - paid laid
out & expended - had & received & an account stated - &
either all or some of these are usually added to every
special account where circumstances require it so if
P^r fails in proving the special count he may resort to
the common counts (Parag. 651) unless the special contract
remains open still subsisting & in force in which case

where the price of goods had been paid revenue account
since it looks upon failure of consideration the theory more unfit
for use 2 Stark 1646 2 Camp 4116

In an action for the price of a chattel ^{Ward 432}
a decree in the sale or that the article sold was of no value ^{Actions 31}
either in law of the action or in mitigation of damages ^{L 895n}

13 Johns 302 Md 548 7 East 480 n 2 Saint 2

1 Camp 190 - 15 Johns 211 n sum in award
on a specialty - 13 Johns 431 - Vice 2 A. R. 141 n that
if there was been any beneficial service of itself recover
the whole claim and leave the other party to his own action
1st R 97 arg^o 16 N 172 and 3 Stark. Thibbs 2d to
recover for the stipulated price of an article ^{Arg^o may show}
the true value in case of a breach of warranty and cause of
action 4 Ward 483 1do 116 9 Bulwer, 259 4 Mann Ry 203

In an action on a written contract for a sum certain
the contract itself furnishes the rule of damages Indy 1.
In Eng^r a distinction is taken between suits for the price of the article
and suits upon a note or other contract given for the agreed price
in the first found or want of warranty may be shown in the letter
part 4 Ward 116 - this distinction has not been adopted in U.S. 11 Willms
50 13 C. 302 2 Ward 431 3 do 236 - (22. L. & 363)

If it be elicited from reviewing on the common counts. 2 East-
114. Parag. 23. 1. & R. 351.

Ind. Aft. will lie on a foreign judgment
(Parag 4) for a penalty sum for breach of bye laws (2 Lev. 252)
for freight (West. 100) for tolls (2 Lev. 252) - in other cases
in which it lies, see Courts 95 Stat. 747, Parag. 27. 185 17 N. 618
Solv. 82 n.

It will not lie upon a bill of exchange by payee
against acceptor (Set 23) for the acceptance is only an
collateral engagement to pay the debt of another - i.e. of
the drawer. So an assignee cannot recover of a promisor
in his own name or a promise to pay it unless there is
a forbearance or some other consideration than assignment
1 Batt. 369. Nor will it lie for an wager for a real
consideration is wanting D. R. C. - Solv. 83

Ind. Aft. will
not lie on a special cugget (Fitz. Lib. 318) until the
terms of it are performed - unless when performed

Rule

where a party declines on a special contract relating
to recover thereon but fails in his right so to do altogether
he may recover on a general count if the case be such
that supposing there had been no special contract
he might have recovered for money paid or for
works & labor done. Bull. 139. 1st 683. 4th N. 334 1st 117.

On an action of ind. aft. for goods sold in (4 East 14. Ellenborough
& 2d aft.) it appeared that the goods in question were to be

For money paid.

one who has a promise of indemnity against a debt
is sued & compelled to pay it with costs may recover of
previous principal debtor & also the costs - Brown 515

A. agreed to build a house for B. for which B. was to pay him \$100.
when the work was completed. A gave C. an order upon B. for the
sum then to be paid & afterwards applied to B. for a part of the
money for his own use while B. refused to pay on the ground
that he had already given C. an order for the whole sum.
In an action by C. against B. upon the order it was held a
that C. must prove that at the time B. refused to pay it the
work had been completed & as such was not the fact C.
could not recover the amount of the order of B. 8 Barn.
a Brown 395 ~~Hastie & Douton~~ - The H. C. in this case claim that
the refusal of B. to pay it amounts to a promise to pay less
& upon this ground decline to recover But it is no defense to an
action on a Bill of exchange given for land told that the vendor
has referred to me 3 Stock. No. 3. 2 14 East 486 8 Campell

paid for in three months after the day on which the
bargain was made by as bill of two months old. At least
the action was probably lost on the implied est^t
before the expiration of the five months & that a special
action of aft^r was the proper remedy to recover damages
of debt such as loss of interest & for him not having at the
end of three months given a bill for two months id
4 East 15 id qu. 18 R 330 id 2 R 1582. See when there
is no express request for time for payment of the goods - but
if he takes the bill in payment - if it is dishonored he
may sue the debtor immediately for the consideration
harbored. 1 Esp. C 5 c 71 R 52 Pa 64 Tolv. 85.

If he is entitled
to recover for goods sold & delivered when he paid for a
certain time if it appears by a special memorandum
that the bill was filed on a day subsequent to the
expiration of the credit after the usual due date has passed
before 4 East 15 58, 163 id id & Tolv. 09. 2 Johns
342 contra.

Where the contract is entire no action upon
it can be maintained until entirely performed or
until the time for performance has expired. 2 N. R. 81
Tolv. 85.

for money paid this action lies if paid laid
out or expended for the use of another with his consent either
express or implied - or where a master is compelled to
pay the debt of his servant (8 R 310 id 2 R 105) where
& insisted that no action could be maintained at law

For money paid.

Where a surety pays the debt of the principal the
creditor is bound to assign over the security to the surety
2 Johns R 496 Aug 2 Term 608

Payment of a money debt in collateral articles recd - a.
money and support or count for money spent & lost 662.
and 3 dt R 462.

I am the the surety have given account for the sum of the debt
not being demanded 2 M 371

An officer paying an ex^r to Dft without his request
can not maintain a claim on the implied promise
for money paid 3 Johns 434 14 do 87 7 do
159 319 429 -

A surety may sustain an action against his principal as often
as he is clamoured to & because of a note may sue the principal
so often as he makes a payment for money paid - 6 Wendt 289
& the recovery in the first suit is no bar to the second 2 Wendt 374

Debtor

where the surety had paid the principal debt - vid 9 Blk 588
Selby 83. To money paid by the security may
 be recovered from the principal tho' paid upon an unexecuted
 contract which might have been avoided by the principal -
 1 M.R. 139, 4 Schen 1481.

To if one of two sureties has been obliged
 to pay the whole debt he may recover proportion of
 his surety & not necessary to prove the insolvency
 of the original debtor 2 Bos. 268. See also where the surety
had been compelled upon to become bound by the surety
paying (2 Esp 8478) no action can be maintained
against him - Debco. 87. 2 & R. 3b9.

To by law against their principal
 for the recovery of such sums as they as law have been
 necessarily obliged to expend 5 Blk 6 171.

To where one has
 been obliged to pay money in consequence of which
 another is discharged from a demand or cause
 of action. The party paying may, notwithstanding
 action against the party so discharged - 9 Blk 808. vid
Selby 83. Notice it is said the payment must be made
with ~~of~~ own money - which I take to mean nothing
more than this - that if ~~of~~ has received no consideration
or discharge from the payment no action can be
sustained - Notice if he has (vid ante) - 4 Inst 1941
at the request or want of ~~of~~ either express or implied
to you -

- But the mere circumstance of one person

For money paid.

Rule. Where one pays money to another on my account without my request abrupt will not lie without an express promise to pay it 18 R 20.

A collector of taxes cannot sustain his complaint to recover them but must resort to his warrant 2 Root 84 nre 1 Root 470 / will lie agst -
the administrator 2 Root 61 -

A & B were indebted to the Adm'r. A gave his land for the debt
A & C signed on security - Then A. died & C took to pay the debt
A made \$10 for money paid for his use stating the sum
to have been received by Adm'r. in the life time of A. held that
part of paying the money for the surviving partner after the death
of A. did not support the acceleration on an implied promise
by all - that the claim of the Adm'r. agst A & B. was extinguished
by the land of A & C. & that C. had a right of action against
A. only - who signed the land 2 John & 219 King & Goodrich

Judic in 15 Mch 38 that in some cases a premium is considered as
placed at the time when there has been only a promise to pay it - a. where
the underwriter has a right to compel payment on a note & has
in his power the evidence of the premium to pay while may exist
after a just - to the prejudice of the assured

having received an advantage from the payment of money by another is not sufft. to raise an a/c^t against the former for concert ~~and~~ ^{as} ~~for~~ ^{implied} ~~is~~ absolutely necessary to support this action. Selw 89. 18 M 20

So it was held in that a broker who had contracted (8 M 410) with third persons for the sale of cotton at a certain day by authority of his principal who afterwards in consequence of the rise of stock refused to make good the bargain could not by paying the difference to the persons to whom the stock was not maintained an action on an implied a/c^t against the principal for the amount of the difference so paid. Selw 89.

So if any one in consequence of his own mistake or negligence in transacting the business of another is but to any damage the law will not raise an implied promise on the part of his employer b East 392 - so if damage be incurred by breach of duty - the for P'st benefit - b East 171. Selw 90. ante

In an action founded on tort against several & one is obliged to pay the whole damage he cannot maintain an action against his co-pst for a moiety - no contribution between joint wrong doers (8 M 186) Lewis in case of a joint judg^t against several psts in an action of open suit - 1 East 220. id 2 Lewis 263

For money had and received.

a qu^s shall that be deemed a valid writteinity which is
given by a Court having competent jurisdiction?
that I shall not recd. Exp's. 3 8/10 125.) 12 1/2) 42

£ 288.9

& then this is an equitable action yet it cannot be substituted
for any mode of relief in bdy. in day 132.

Exp ..	3
2 Bus	1102
13 P.	39
13 A.	27

In an action for money had & received to off^{er}
use it is no defense that deft. has a distinct
claim agst. off. for an equal or greater claim
unless there has been an agreement between
the parties to apply the latter claim in
settlement of the former (C. N. 89)

Will action for money had & Rec'd where deft has rec^d collateral
articles in view of cash for off^r property's g. P. & S.
692. 693 & East 349. (7 lawmen 662 yrs) inc 36t 462
(Paid 482. 11thm 498 1907)

11th principles 1st 1812 17

If three or more bound jointly to another in a bond & to pay the amount they must bring separate actions against the third for the recovery of their respective moieties of what the third was liable to pay & cannot join in the action - 2 Bos. 235
5 Esp.C. 194 Below go-

Bor in money had & received this action
& lies & is founded on all the equitable circumstances
of the case between the parties - H. must shew that he
has Equity & convenience on his side - Ch. 4. 1/3 pay
money to one who claims an authority to receive it,
when he has no such authority (2 Sid 14 - 6 M. 606)
& afterwards I am compelled to pay it to the person
compulsory entitled to it - this action lies in my favor
against him who was unlawfully received the money
Below 91. 2.

If C. be indebted to B. & pay such debt to ~~A. & B.~~ ^{the debt}
the debt of a person suing C. in 18th or above but without
B's authority B may notwithstanding recover the
debt in an action against C. where necessary is against
the debt. 18 M. 62.

Decided in 18th 10 that if C. conveys the same land to L. & receives the
money of C. for the land L may maintain his action
against B for money had & received of C. to L for
the use of C. --- An action for money had &
received will lie against a sheriff for money received
on execⁿ - but there must be a special statement of

For money had and received.

In an action on a warranty for defect in a chattel it is not necessary for ~~the~~ to shew that ^{the} Dft made the warranty in express words but any representation by deft of the thing sold or a ~~direct~~ ^{express} affirmation by him of its quality & condition showing his intention to warrant is suff 19 Solers 290 - 20 ab.

2. To special Ind. left will lie for money so by mistake in a settlement 18 Oct 148

Expt. 2.
Setl. 28

Where goods or money is deposited with one person for the benefit of another upon a present consideration the deposit is not revocable - Scimus if there is no previous consideration Black case 2 Law. 30. 31 Dy 49 McLean v. Temple 4 Burr. 2239 Whitfield v. Banbury 2 Bos. 279.

~~but if he has not, he may sue for it~~

Jurts in the declar. 2 locam 172 & vid 4 M.R. 32 C. 3 Johns 183
2 pay 369. 3 Cranch 237. 2 4 Johns 240

2 - where a person has usurped an office belonging to another (2. 0od 200) and taken the profits thereof ~~they being certain & settled~~ this action lies in favor of the party aggrieved - ~~less~~
~~if the profits received are mere gratuitous gifts to the~~
~~intruder.~~ & 3 H. 681. Selyw 91-

But this action will not lie for the profits of a curacy until ~~off~~ he has obtained prof. -
13 H. 399 in 2 31 H. 851 S.C. 13 H. 403.

3. Where money to which there was not any ground of claim in conscience has been paid under a mistake the party may recover it back in this action (Selyw 92 - 1 Coll. 14) As where a being indebted to a bankrupt paid the debt to the assignee without settling off as he was entitled to do a sum of money due to himself - hold on that he might recover the sum which he has neglected to set off - in an action of law left against the assignee for money he has received 14 H. 285. vid also 4 3 H. 432 in n. 2

But where money has been paid under compulsion of legal process in one action in which the party might have defended unavailly if he had been prepared with his evidence it cannot be recovered back in an action for money he has received the such evidence he produced at the second trial as shewes

For money had and received.

Q. re qu. was not the first judge deceived or misled the ~~soft~~
merit of the case so tried in consequence of want of jurisdiction
in the inferior Court? If so Bacon may be cited. 1st. 1611
181 Corp. 419 2 B&2 219 2 Bacon 1805 / but not correct ~~bent~~ as
cited to the great principle -

If a security is taken for a present debt of money is included in
such security if the security is avoided against it may be maintained
for the original debt 19 Edw. 1583 Corp. 119 176. Bl. 462 15 R. 153
but if the lending & receiving agreement are contemporaneous acts of
the security is avoided 1st qu. whether an action could be
maintained to recover the original sum lent without a
subj^t furnis^t to pay it

Exr .. 2
2 Sum. 1012

paid 18. a sum of money for a bill of exchange once drawn
who failed before it could be tendered - holden that as 2d. - 2
might recover back the money received - for the Pd. 304.
consideration had & paid 18. 1407

Muniment book D. 10. v. 1.

that the other party was not entitled to recover it in the first
731 269. But see 2 Kerv 1009. contra sed quod videlicet 246. 131 2414
Solv 92 - 1 Nov 176

Where a party pays money to another with a
full knowledge or means of the knowledge of all the facts of
the case he cannot recover it back again on account
of his ignorance of the law. 2 East 469. 3 Rep. 520/ Secur if a
payment has been made not with a full knowledge of
the facts but under a blind suspicion of the case - if paid
unjustly it may be recovered back 2 East 474 n. vid 1 Esp. 6.
84. 3 Rep. 520 -

Money due in payment of honor & conscience
the debtor is not compellable to pay it yet if paid shall
not be recovered. 2 131 R 824. Solv 95

4th Where money has
been paid without consideration or on a consideration
which fails an action for money had & received will
lie to recover it back. 2 131 1073. 1 131 131 65. Cons 197. 1 131
732 6 East 241 - vid 3 East 16. 2 131 306 -

An action for
money had & received will not lie against a man
whom he did not entirely receive any benefit of the
consideration at the time he signed with grantor
in signing a receipt for it 2 131 306 vid 5 Johns 176
For example under the division 4th vid 6 131 606 - Doug
654. 4th. 915 to and all land & ten 85 below 96. 7.

5th If every
undue advantage be taken of a person's situation

For money had and received.

Where one pays money to obtain possⁿ of goods he is entitled & entitled to sue for it
Account otherwise obtain such payment is compulsory 14 Ed. 6^y Cr. 112
2 Bum. 1012

237^y 768

Where money or price for labour & the title fails 14 Ed. 14
it cannot be recovered back unless the deed was
one with covenants or there have been fraud & neglect -

47. Lien in case of personal prop^y. See - But want of
title is a good defense to an action on the land given for the
purchase money 1 Ed. 4 36 3 Sticks 1684 n 2 Wheat 13

This action lies to recover back money of which a person
has been defrauded by cheating or embezzlement. 1 Ed. 5. Nov 11 180
Court 197. that the owner shall recover the <sup>prop^y in the
hands of a 3^d person if he received it under false 2 Ed. 5 -</sup>

2 BIR 1073

36 Bl. 65

Court - 790

180^y

15 Nov 1413

5 Term. 3312

6 Inst. 1437

8 Inst. 1492

3 Batt. 179 -

Where there is a mistake in a Settlement, money had &
paid will lie / & then 560 / not necessary to have a special
action -

Court 197

8 Batt. 378

2 Batt. 1073

14 Batt. 65

8 Batt. 241

12 Batt. 732

I money obtained from him by compulsion such money may be recovered in this action for money had & received - Ex. If he owned goods without any agreement for interest but on redemption & he compelled him to pay more than lawful interest. Held that this action should lie to recover the excess - for the rule solentis non fit injuria habet, only where the party has a freedom of exercising his will. (4 N. 153. Doug 15) (He was not the detainer of the pledge or placed upon power.) (See below 98 in n.) on Doug 727- b71

3rd Where contracts are or transactions are prohibited by positive stat. for the protection of one set of men from another if money is paid by the one who from their situation i.e. the liable to be oppressed & imposed upon by the other the party paying is not considered as standing in pecunia delicto & after the transaction is completed may bring his action to defeat the contract. (See 100) or a creditor refused to sign the certificate of a bankrupt unless a sum of money was given him by a friend of bankrupt - Doug 696 - Bull 133 - 2 H. 25) - the friend gave the money & in consequence thereof creditor signed the certificate - held however that it might be recovered in an action for money had & received (See 101) - so of meritis contracts - parties not in pecunia delicto Doug 1471 - where a contrary doctrine in Shirr. 411 & Sol. 22 was denied. see also Camp 199 - to same effect - 8.257

(Geschr. - that in cases of

Where the owner of goods sells at auction or any other
person for him attends secretly to bid upon the goods to
enhance the price it is a fraud on the real purchaser
1 Edw 2 16 / also if there is an agree^mt between
two that one of them shall not bid it is a fraud
upon the seller 6 John R 194 / so an agreement between
two to divide the merits of the purchase which one
of them should off. is fraudulent 8 John 444. So of
sales upon ex^c 13 John R.

In an action for the price of a machine & other articles sold by
A to B for which a note payable to C was taken & the
machine being deemed to be worthless it was held that
C could not recover on the note there being a failure of
consideration, nor on the common count for the payment
(the sum that was valuable) inasmuch as he never sold the
goods 9 March 45

Payments to a known agent the action for money had so
right to be brought against the principal action on ~~the~~
promise to pay the factor for the use of his principal
the factor may bring the action in his own name (4. M.
263) unless in special cases as under notice or
mala fide. Bull 193 4 Barr 1984 - 49 N 553 Camp 204.
- If money be paid by mistake to the known agent
placed by him to the amount of his principal namely
but not paid over nevertheless it given back bills accepted
or further sum advanced to the principal in consequence
of it the action for money had received will lie against
the agent Camp 566. So if there has been any
illegality in the transaction on the part of the agent
this action may be sustained against him tho he
has paid the money over to his principal. Selv. 101n 88
(C. up. N.P.C. 396.)

Again where one had offered
to pay a sum of money for the use of the poor of the
parish in order to avoid a prosecution by a magistrate
which offer the magistrate accepted & the money was
paid to the party to the master of the workhouse for
the use of the poor men countervailing the application
of the money before it is so applied & recover it back
in this action - q East 49 Selv 105

7th Where money
has been paid by one of two parties to an illegal contract
to another person for the use of the other party an action
for money had & received will lie against the third

"¹⁷ D^r in Litchfield Monday Sept. 17th 1849. Gen Francis Bacon

Rule if one have paid money on a contract contract bonos
mores he may recover it back deem where paid on
a contract forbidden by positive law & do make
in ec. 7 Johns 441 2 Bl. R. 1673 7 D. R. 535
11 Johns 29 7 East 449 12 d^r 225 45 count
165 5 Johns 384 n - The distinction appears
to be taken between contracts immoral or criminal
of such as are simply illegal & void - Courts
refuse their aid in cases of the first sort & give
it in the last -

Doug⁴⁶⁷
38 R. 266

If A agrees to give B money for assisting an illegal
act B cannot recover the money by execution
& if paid - cannot recover it back Bull 16.132
4 Johns 220 2 M. S. R. 1 Peake, C. 128

Mumpit

to recover it. And where money was paid by one under
writer to the broker of the assured for his the assurance
even illegal contract of insurance (1 Bos. 3) it
was held that assured might recover it of the
broker. Broker could not insist on the illegality
of the contract as a defense the obligation on him
arising out of the fact of the money having been
received by him to the use of Pff. which created in
law to pay (1 Bos. 296) the man may be stopped while
in treasurer) que non ante

But where money does not
appear to have been entirely in the hands of Pff. (8
East. 222) but only an account stated between him
& the other party to the illegal contract in which
Pff has given credit to such party for the money the court
will not sustain Pff's demands for by so doing they
would complete the effect of an illegal contract. Aet. 107

Pff where money is paid by one of the parties to an illegal
contract to the other in a case where both parties may
be considered as parties criminally liable action cannot
be maintained after the contract is executed to
recover the money back again for in such a case
parties contract dependentis 8 Bos. 575 and quod in
78 Po. 585 where money paid on an illegal wager was
recovered back after the event on which the wager
proposed had terminated against Pff. and quod in East
98 8 East. 4382 82/25/5-1 M&M 65 Court 790

A. agreed to give B \$1. per day for his services, in an action
B. vs A. to recover the amount. A. in mitigation of damages, may
show that the work was not properly performed - but evidence
is required A. can sustain no suit v. B. for damage he
must bring even 14 Dollars & 37¹/₂ 13 d^o 30² 8 d^o 1153

q d^o 25² 12 d^o 34². & so in an action for the price
of a chattered Dft may prove a defect in the sale
of that the chattered was of no value & defeat the action
or if the unsoundness produces a partial diminution - que. 3d East 488
only he may show that part in diminution of
damages, 13 Dollars 30² 16 comp 190 8 Dollars 1153
So in an action on a bill given for the price of
goods sold under a warranty, the breach of the
warranty is an answer to Dft's demand if Dft
tendered the goods back 2. Demand. 2. 7 Dollars 381 n. b.

Secd que. unless the action be on a quantum in iuitio or if an
a special contract to pay a specific sum unless notice of such
defence be given - 7 East 1483

Said 7 East 1485 n. 1. that if no benefit arises there
shall be no pay - but if some benefit tho' not to the
plaintiff expected it shall go to the Dft's amount of
Dft's claim not leaving Dft to his action for the
re recovery, etc. 1. Example 38. Peake C. S. 9. 2. N. R. 136
comp 190 - 66² 477

so a premium paid by a foreigner on an illegal insurance
that the policy is illegal by the law of this country only -
it cannot be recovered Lamb. 34 N. 266 3 Bos. 35-

9th where
the contract is not malum in se nor prohibited by any
positive law but is of such nature that it cannot be
put in force for only because it would be inconvenient
that the merits of the question should be publicly discussed
in such case while the contract remains executory
money paid upon it by one of the parties to the other
may be recovered - 2 Bos. 130 4 67 671 Camp. 468 71 D. R. 89
as to distinction between executed & executory contracts
also Peck C. 221 3 C. L. C. 253.

10th The proprietor of cattle
wrongfully detained damage peasant who has paid
money for the purpose of having his cattle redelivered
to him cannot recover that money in an action for
money had & received for the law has provided but
two specific remedies for trying the question of this kind
- replevin & trespass & pursuing any other would impose
great difficulties upon it by not expressing him of
what he was to depend. Camp. 414 - neither will cave lie
for detaining cattle detained damage peasant if tender
was not made till after impounding. 1 Camp. N. P. 6 285
Sels. 11 in 2

But where an action for money had & received
was brought against an owner of the place (Bull. 131 cited in
Camp. 419 & 134 387.) to recover money in his hands which

If a party pays or demands a debt when demanded
instead of contesting it & is alleged he is afterwards entitled
to deny the legality of it 14 Ep. C. 11 sec 84. 279 2 C. &
286 - / add question to the extent of this doctrine - / 23. C. L. 407 that
if paid after suit threatened unreasonably & without fraud it is a
payment under compulsion & legal process & cannot be recovered
book 1 Ep. C. 279 b Sec C 679

2d 181 134 Aug.
1st 2 Binn 1012.
3. add H. Bl. 17

C. But if P. would review the contract entirely he must do
it within a reasonable time. 14 1/2. 136 per Recd. 1.

If one agrees to make an article of certain materials
& makes it of better ones he cannot charge more than
the stipulated price and send or return of the
article 14 C. L. 386 -

In contracts of sale on the sole or quota per measure
quanta of a certain description there must be an express
warranty of freedom 13 John. 24. 95. 129

had been levied by a sale of ~~aff~~ goods on a conviction which was afterwards ~~suspended~~, held that the action was maintainable for the clear money produced by the sale. It might waive the tort. Selv 112. n. 11 also 4 H. 188. 485-486. 5 East 122. 48 H. 553.

11th Where the contract is legal ~~aff~~.

cannot on the general counts in afft. while the contract remains open his only remedy is on the special agreed 3 H. 188. 135. 3 Ex. R. 42 Doug 24 n. Caus 818. 2 East 145-^{and} vid 1 Eccles 4 v. 1 Dall 428. See, where the contract is rescinded by the original terms of it no act remaining to be done by Deft. If may recover back his money (H. 188. 1) to where a contract is not carried into effect by reason of some negligence of one party (H. 181) the other not having done anything in respect^{to} of the contract may rescind & recover back his money when by so doing the contract will be rescinded^{in toto} the parties placed in status quo. 1 N. H. 357 Selv 114- 5 East 449

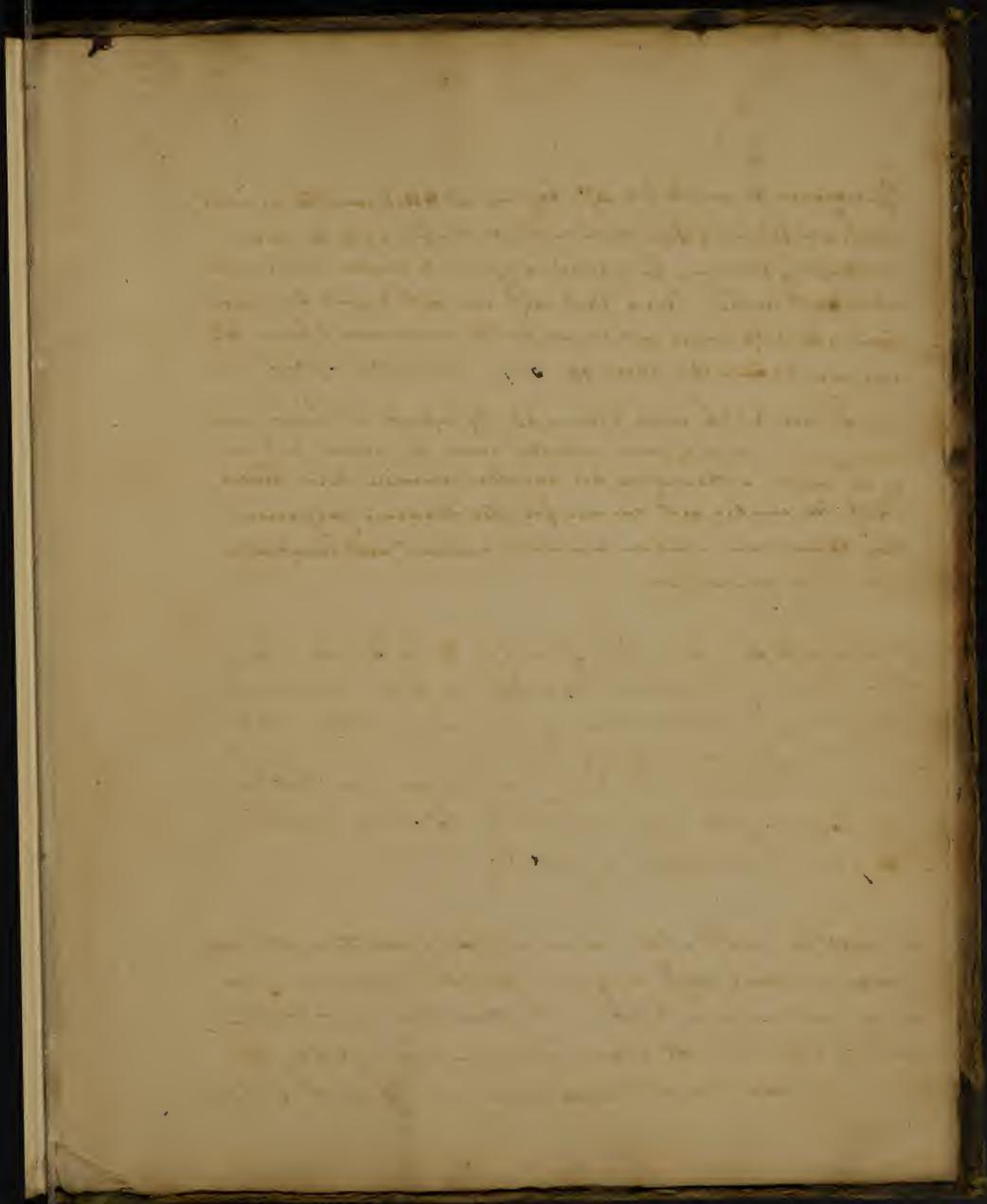
12th In an action for money loan & received ~~aff~~- cannot recover unless it be against conscience that Deft should retain the money. 3 Burr 1354 181 R. 390. S.C. Selv 114- In Virginia an endorse^{of} a promissory note cannot maintain an action against a remote endorser for want of priority - 1 Bram 298 3² 212-3- If a negotiable note be given for a simple contract debt no action can be maintained on the original contract unless the note is proved to be lost or produced & connected at trial - 1 John 34, 3 Bram 301

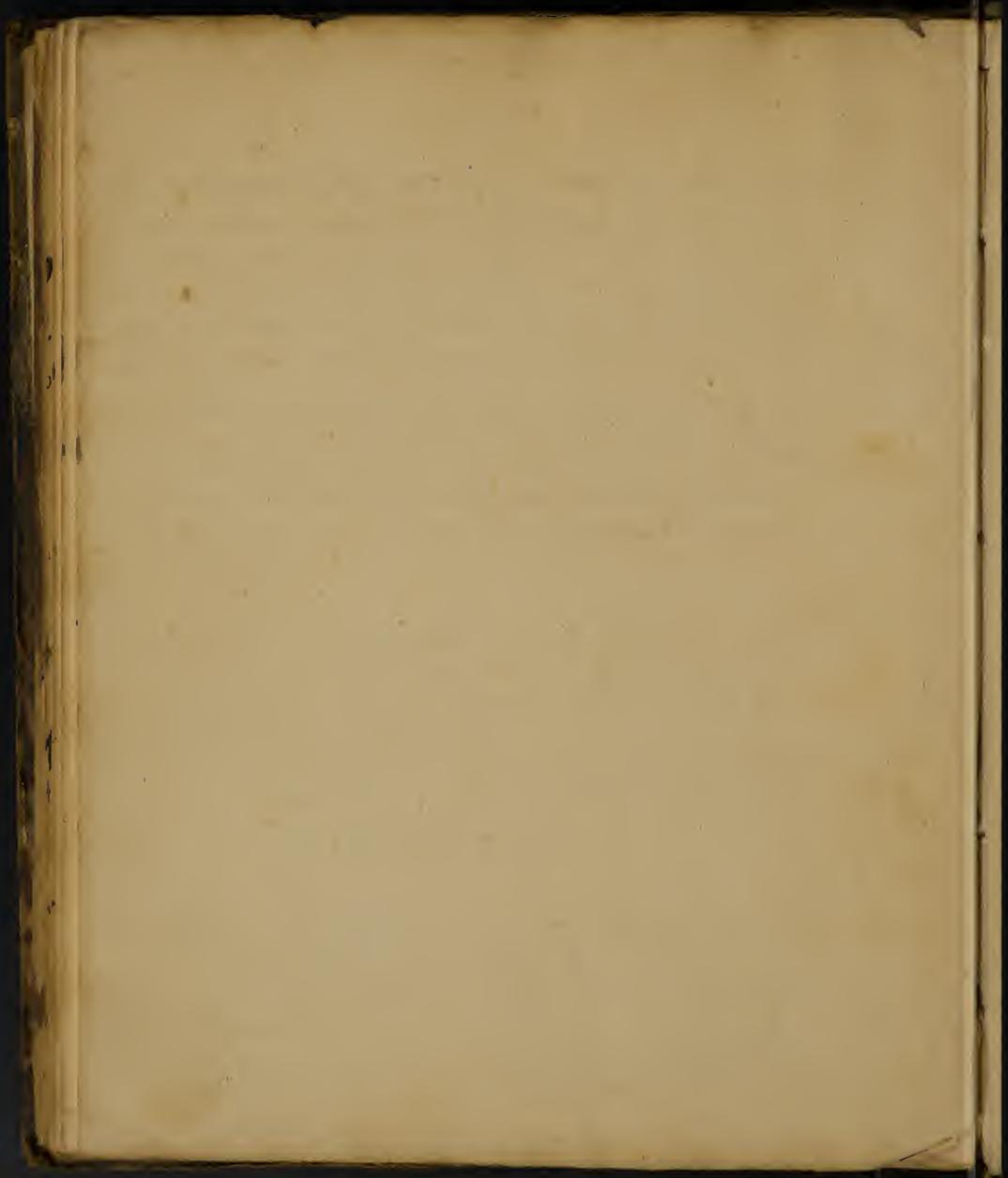
Pf. agreed to work for dft 1 year at \$10. per month, he worked 10 M^s. on Saturday said he no longer no longer & left the service on Monday following he returned & offered to resume the work which dft declined. Note that dft was not bound to receive him & that Pf could not recover for the work done & allowed 63 recd alw 12 then the 13 th 94 359. 4 Head 606 27 & £ 190

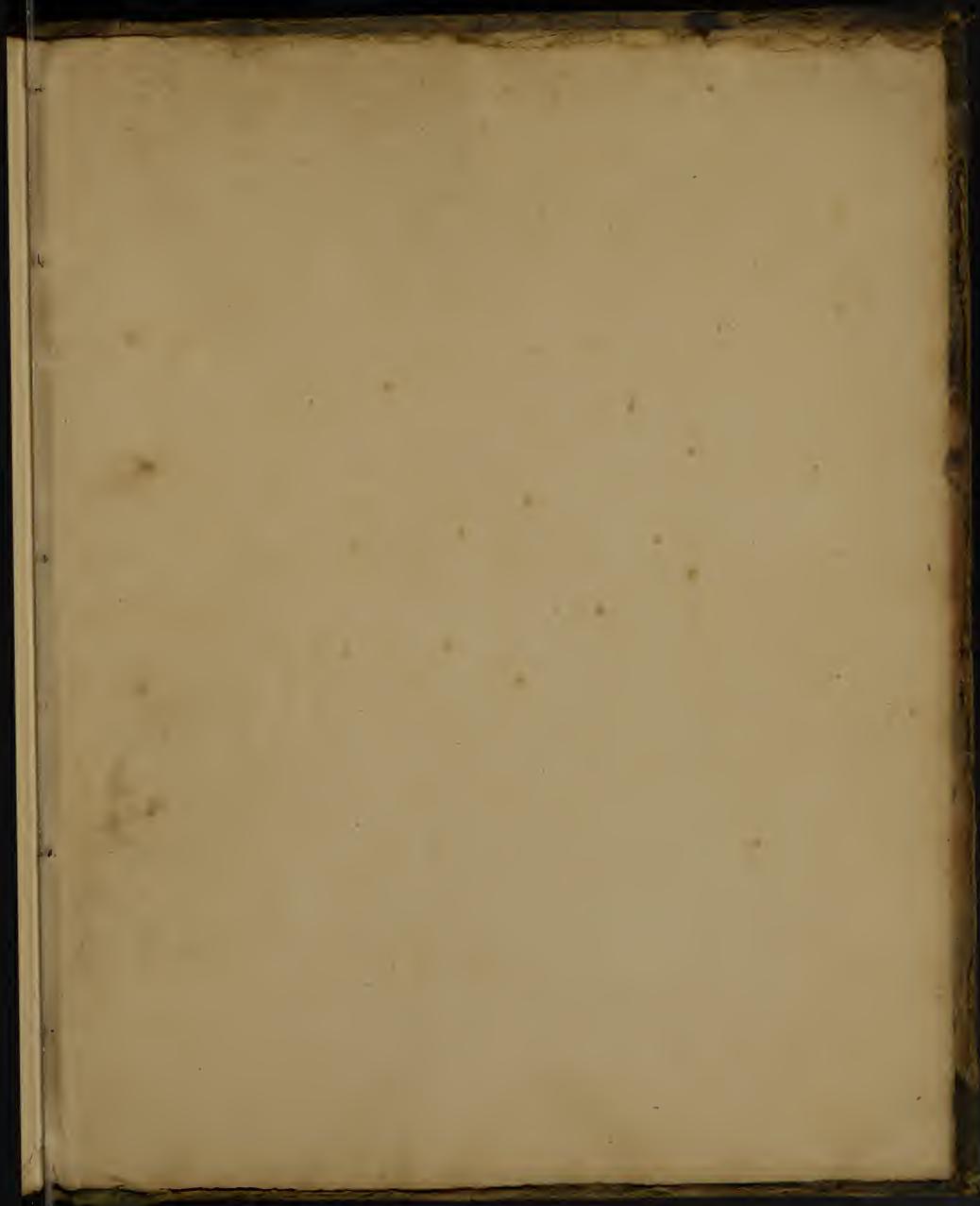
So 2 Starke N 256 cited & allowed 63 Pf refused as dinner was ready to go about a mile with the horses, they ordered so to do by his master & thereupon his master claimed him - held that he could not recover for the services performed they being rendered on an entire contract not completed when thus dismissed -

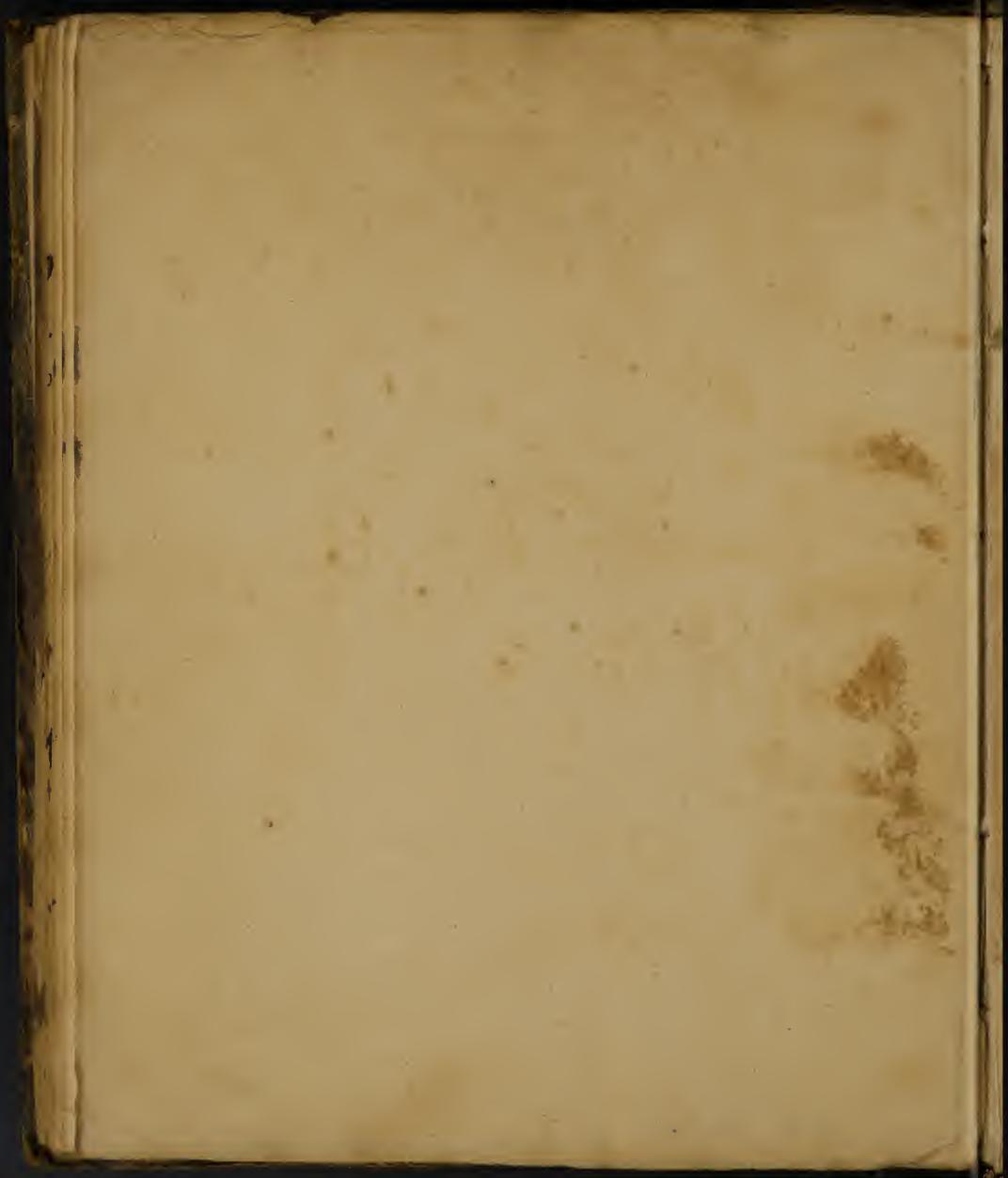
A agreed to saw 500 m^s feet of boards for B. he secured a part & then abandoned the contract. In a suit by B. for damages in not performing the whole contract it was not permitted to set off the value of his labor actually performed under the contract 4 Head 606. Montag. 17. 2d sum 555 on the principle that not having performed the whole contract he shd not be permitted in any way to recover for a part performance

In debt for work & labor on an implied contract on the place of never intended dft may prove that the work was done under such circumstances as to show there was no implied contract but cannot show misconduct except for the same purpose he shd have claimed Pf 256 £ 525









Gift of
Donald J. Warner
7/18/87

